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THE UNIVERSITY OF ALBERTA

PROCEDURES AND REASONS FOR TERMINATION OF TEACHER CONTRACTS IN CANADA

by

© ALLEN KEITH HARRISON

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE

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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled PROCEDURES AND REASONS FOR TERMINATION OF TEACHER CONTRACTS IN CANADA submitted by ALLEN KEITH HARRISON in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Educational Administration.

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ABSTRACT

The purpose of this study was to examine procedures and reasons for termination of teacher contracts in Canada.

The primary research undertaken was a description of statutory and case law in each province and territory. School legislation in each province and territory was searched to determine procedures and reasons for teacher terminations.

A major portion of the study was comprised of a descriptive analysis of statutes and other agreements related to termination of teacher contracts. Similarities and differences in procedures in each system were noted. A second major portion of the study was devoted to a description of selected teacher termination cases from across Canada. Reasons for termination were identified and analyzed. Some landmark and other unusual cases were also identified.

The study also dealt with contract law, precedent and stare decisis, judicial review, teacher tenure and natural justice as they are related to termination of teacher contracts.

As a result of the study it was concluded that the most common statutory reasons for termination of teacher contracts were neglect of duty, incompetence, misconduct and refusal or neglect to obey a lawful order of the board, whereas the most common reasons cited in cases were incompetence, elimination of position, misconduct, neglect of duty, and insubordination.

Recommendations emanating from the study were that:

1. a Canadian model for termination of teacher contracts be developed;

2. termination for alleged incompetence be handled by means of a separate and independent process; and
3. "elimination of position" be carefully monitored as a reason for termination of teacher contracts.

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CHAPTER I

INTRODUCTION

Purpose of the Study

The purpose of this study was to ascertain procedures and reasons for termination of teacher contracts in each of the ten Canadian provinces and the two Canadian territories.

Canada's constitution, the British North America Act of 1867, gave provincial legislatures sovereign powers over education. Section 93 of the British North America Act required the legislature in each province to make laws in relation to education. Provincial autonomy in education is based on the B.N.A. Act and within each province the legislature assumes responsibility for legislating and regulating educational activities. Consequently, Canada has ten provincial and two territorial school systems, each independent of the others. Therefore, each province and territory has enacted legislation regarding termination of teachers' contracts. These enactments generally state procedures and sometimes state reasons for termination of teachers' contracts within their boundaries. As a consequence, the legislation pertaining to termination of teachers' contracts is different in each province and territory. Therefore, it follows that to ascertain legislation in each province and territory it is necessary to examine legislation as well as some cases that have been the subject of litigation, so that similarities and differences in termination of teacher contracts may be identified.

Importance of the Study

Major changes have taken place with regard to the termination of teachers' contracts as a result of legislation and court decisions. While at one time it was common for teachers to serve at the pleasure of the board, in recent decades protection typically has been afforded against termination without substantial grounds. Protection lies in statute and case law or often in a combination of the two, although cases do arise which are not governed by any statute or precedent. Regulations may be stated in general terms, such as a teacher may not be dismissed without cause, or the statutes may stipulate specific causes such as incompetence, insubordination, neglect of duty, or gross misconduct.

The identification, description and amalgamation of present legal requirements regarding the termination of teacher contracts across Canada should be of interest to the public, school boards, educational administrators, teacher organizations and teachers. The question may arise as to whether teachers understand and appreciate:

--the extent to which legislation and precedence determines their rights and responsibilities;

--interpretations handed down by courts with regard to relevant legislation;

--the influence that administrative tribunals and quasi-judicial bodies have on their legal status.

As a result of this study, significant implications emerge especially for administrators who are involved in termination of teacher contracts. Teacher organizations involved in defending teachers whose contracts are terminated also benefit from this study. An interest in this legal aspect of the teachers' working environment has led to an investigation of procedures and reasons for termination of teacher contracts in Canada.

Review of Related Literature and Conceptual Framework

Studies related to the termination of teacher contracts are very few. Provincial studies related to termination of teacher contracts have been done by Swan (1961) on The Board of Reference in Alberta, Scott (1971) on A Study of Quasi-Judicial Tribunals in Saskatchewan and Czuboka (1975) on The Status of Tenured Teachers in Manitoba.

The legal aspects of Canadian education have also received limited attention. The body of literature that has been developed is particularly limited when compared with research in the United States. Canadian research has been produced by educational rather than legal writers. With the exception of McCurdy's (1968) study on The Legal Status of the Canadian Teacher and Lamb's (1959) study on Legal Liability of School Boards and Teachers for School Accidents, no attempt has been made to develop a compilation of Canadian law relevant to teachers.

In Canada, organizations do not exist whereby educators may be kept aware of contemporary legal developments in their field. Canadian education does not have any regular publication or planned in-service program to keep educators abreast of current legal problems. In the United States there is an organization called the National Organization for Legal Problems in Education (N.O.L.P.E.). N.O.L.P.E. publishes a periodical and yearbook on education and the law. In addition, N.O.L.P.E. sponsors several conferences on current legal issues. Canada does not have an organization equivalent to N.O.L.P.E.

In an attempt to fill the void in the legal aspects of Canadian education, McCurdy (1968) provided a study of all the legal aspects of teaching. However, McCurdy (1968) devoted less than thirty pages of his study to the termination of teacher contracts in Canada. In addition, McCurdy's study was conducted during a time when there were few Canadian cases, therefore, his study was based on more American than Canadian cases. McCurdy (1968:68) says that "American cases in particular are cited, inasmuch as tenure cases in Canada rarely reach the courts." Since that time, however, greater numbers of Canadian cases involving termination of teacher contracts have reached the courts. Therefore, Canadian cases are concentrated upon in this study.

Figure 1 illustrates the areas under study in McCurdy's thesis. McCurdy's study covered six different legal aspects of teaching whereas this study investigates and elaborates on one aspect of McCurdy's study, namely termination of contracts.

The two main sources of law for this study are:

1. Statutory enactments which are statutes that are the most important legal source of law. Legislative bodies in most provinces and territories have passed statute law regarding the termination of teacher contracts. In some cases subordinate legislation in the form of regulations authorized under the statute contain clauses related to termination of teacher contracts. Other sources for procedures in the termination of teacher contracts are found in collective agreements.
2. Case law which is comprised of court and quasi-judicial decisions involving termination of teachers' contracts. Courts are bound

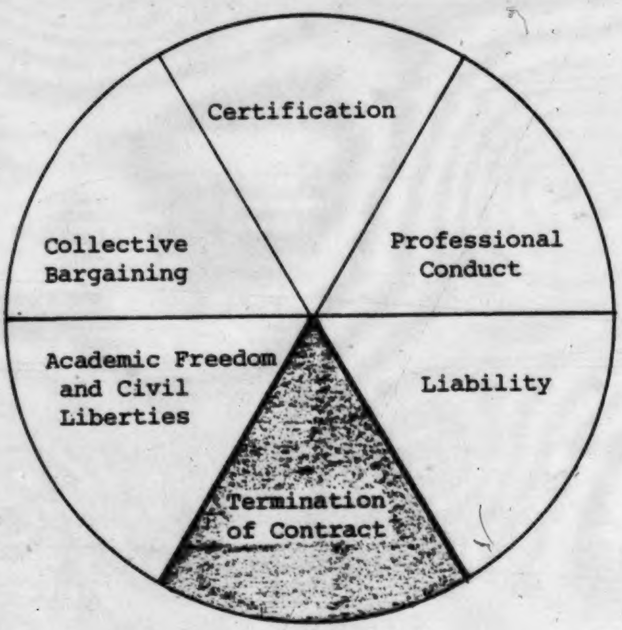

Figure 1

McCurdy's Areas of Study

to follow precedent cases in accordance with the doctrine of stare decisis. The body of case law is referred to as common law and is a major legal source of law in the Canadian legal system with the exception of Quebec. The Quebec legal system, which is known as the Quebec Civil Code, is based on the Napoleonic Code. In Quebec, precedent and stare decisis do not have the same influence as in the common law system.

Research Design

Procedures and reasons for termination of teachers' contracts in Canada are outlined. The primary research for this study was a description of statutory law in each Canadian province and territory. School legislation of ten provinces and two territories was searched to determine procedures and reasons for teacher dismissals. Teacher organizations in each province and territory were asked to verify existing legislation related to termination of teachers' contracts in their area and to provide details of cases related to statutory legislation that were the subject of litigation. Teacher organizations were also requested to provide any additional information that could assist in explaining procedures regarding termination of teacher contracts. In addition, personal interviews with personnel from teacher organizations in Western Canada were used to verify the accuracy of information. Secondary sources of information were law reports and departments of education.

Because four out of ten provinces (Alberta, Ontario, Newfoundland and Manitoba) revised school legislation in 1970, that date was judged to be an appropriate starting point. Legislation regarding procedures and cases based upon that legislation was considered from 1970-79. Also, since substantial changes governing teacher tenure occurred in 1970, cases prior to 1970 were of little assistance and were used only if the cases were shown to be important precedents.

One portion of the study was comprised of a descriptive analysis of statutes and other agreements with regard to the termination of teacher contracts in each province and territory. The similarities and differences in procedures between each system were noted. Any special or unusual circumstances were also highlighted.

The second major portion of the study was a description of teacher contract termination cases from across Canada. Special note was made of reasons for termination and whether such reasons were upheld in the hearing.

From a description of statute and case law previously outlined, it has been possible to:

1. identify major and minor reasons for termination of teacher contracts in Canada;
2. identify landmark cases and their contribution to subsequent cases;
3. determine whether Canadian teachers have security of tenure; and
4. determine the extent to which the rules of natural justice apply to the termination of teacher contracts in Canada.

Delimitations

This study was delimited as follows:

1. Procedures and reasons for termination were restricted to the public schools in each province and territory.
2. Cases from which litigation did not arise have not been examined.
3. Only statutes in effect from 1970-79 were considered.
4. Cases dealing with tenured teachers are the only cases considered.
5. Cases that have progressed to a hearing and settled "out of court" were not considered.
6. Quebec cases are only printed in the French language. The number of cases selected was therefore restricted due to the high cost of translation.

Limitations

This study was limited to cases that have been reported. Because some provinces hear Board of Reference cases in camera, such information was not available for research purposes. In other provinces, even though the hearings were held in public, the cases were not reported. However, an effort was made to obtain as many cases from as many different provinces as possible.

Definition of Terms

In most instances definitions are apparent from the context, however there is a possibility of using terms that have different meanings in various parts of the country. Also, as an aid to the reader who may not be familiar with legal terminology and to prevent possible ambiguity, the following definitions are used as a general explanation of some legal terminology and concepts.

Case law. Case law is judge-made law, based on the doctrine of precedent and is concerned with the interpretation of constitutional and statute law. Case law usually interprets the provisions of statutes and regulations.

Certiorari. Certiorari is one of the remedies developed specifically to deal with relations between government administration and the public. When it is granted, it "quashes" a decision, that is, makes the decision invalid. This does not mean that a different or even opposite decision has been made, only that the original decision has been eliminated. Essentially this remedy returns the situation to what it was before the first decision was made.

Collective agreement. The collective agreement is a document covering salary, conditions of work and associated aspects and is negotiated between teacher organizations and school boards.

Contract of employment. An agreement between a teacher and the school board whereby the teacher agrees to teach for the school board in return for an amount of money.

Dismissal and termination. For the purposes of this study these two terms are used synonomously. They both mean release and discharge from employment.

Due process of law. In its simplest form due process means according to the existing law, whatever it may be at a given time.

Judicial or quasi-judicial tribunal. A judicial or quasi-judicial tribunal is one which exercises a function whereby the tribunal has the power to deprive an individual of his fundamental rights or liberties and where the rules of natural justice must be followed.

Litigation. Litigation means using the legal process including courts, to resolve a dispute.

Natural justice. There must be a fair hearing. Included therein are the related notions that each party has a right to receive notice of a hearing, and during the course of a hearing, each party has the right to rebut the evidence adduced, to cross examine witnesses and to obtain legal representation if desired. All forms of bias must be excluded from the considerations of administrative tribunals.

Precedent. The doctrine which requires a judge to follow the decision in a previous case if the facts are essentially the same.

Quasi-judicial function. Functions exercised by an arbitrator or an administrative tribunal akin to those of a judge.

Stare decisis. The doctrine of stare decisis requires that a judge of a particular court must follow the previous decision of the highest court within the particular provincial jurisdiction in which he resides.

Statute law. The body of law that builds from legislative enactments.

Teacher. For the purposes of this study, a teacher is a person holding a valid teaching certificate issued by an educational authority of a Canadian province or territory.

Tenured teacher. For the purposes of this study, a tenured teacher is a person who has a permanent or continuous contract of employment and cannot be terminated except under procedures laid down by statute or agreement.

Tribunal. This word is used to mean a person or group of persons given the task of reviewing the decisions of decision makers; this body is a special tribunal set up under a specific statute, regulation or collective agreement.

Organization of the Study

This study is organized into seven chapters followed by an extensive appendix. Chapter one serves as an introduction and outlines how the study was carried out. Chapter two provides the context and background material necessary for an understanding of the information that follows.

In the first of two major chapters, Provincial and Territorial Procedures, legal procedures for the termination of teacher contracts in each province and territory are presented. In addition, procedures are compared by way of tables so that similarities and differences become apparent.

In the second of two major chapters litigation that has arisen in the courts across Canada is presented. Cases are reported province by province and the reasons for termination are noted. A comparison of statutory reasons and reasons given in casea is also presented. The relationship between procedures and cases is discussed in Chapter five.

Reasons stated in the cases studied are presented in Chapter six. In this section reasons for the termination of teacher contracts are grouped into six categories. Landmark cases are also identified as milestones in the development of equitable teacher termination procedures across Canada.

In the final chapter a review of current teacher termination procedures is presented along with a review of the major reasons for terminating teacher contracts in each province and territory. Summary, conclusions and suggestions for further research and study are also made.

The appendices, or the last section of this study, contain a compilation of provincial and territorial statutes, regulations and collective agreements that contain provisions for termination of teacher contracts.

CHAPTER II

CONTEXT AND BACKGROUND

Introduction

"Ignorance of the law is no excuse" is an often used phrase. While that statement is true it often is unreasonable to expect laity to be knowledgeable about all aspects of current legislation. It is reasonable however, to expect that individuals will acquaint themselves with legislation that is relevant to their occupation. Knowledge of the law as it relates to termination of teachers' contracts may prevent unnecessary court action for teacher and employer. Disputes over termination of teachers' contracts are inevitable. Inherent conflict exists between the interest of the employer to exercise as much control as possible and the employees, on the other hand, who endeavour to protect their security. The employer normally maintains that it is management prerogative to discharge an employee while the employee usually sees termination as unjustified punishment.

British North America Act

The framers of the Canadian constitution were concerned with division of powers between the proposed federal government and the existing regional governments. Allocation of powers had to take into account responsibilities, such as education, that colonies had already assumed.

The British North America Act, 1867, granted sovereign powers over education to provincial legislatures. The British North America Act set out the powers of the provincial governments, established some concurrent powers, and left the rest to the federal government.

Public education in Canada is a provincial responsibility. The legislative power is derived directly from Section 93 of the B.N.A. Act which reads as follows:

> 93. In and for each province the Legislature may exclusively make laws in relation to Education, subject to and according to the following provisions: -
>
> 1. Nothing in any such law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
>
> 2. All the Powers and Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
>
> 3. Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is established by the Legislature of that Province, an Appeal shall lie to the Governor-General-in-Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:
>
> 4. In case any such Provincial Law as from Time to Time seems to the Governor-General-in-Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor-General-in-Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor-General-in-Council under this section.

Section 93 places control of education with the provinces and at the same time protects rights of religious minorities and makes provisions for redress if these rights are violated. Section 93 also establishes legal and constitutional contexts for public education in Canada by attempting to provide a solution to two crucial issues in Canadian education, the relationship between church and state and between federal and provincial governments. Although education is not under the direct control of the federal government it does have an interest in education and is empowered to enact legislation if provincial legislation contravenes provisions in section 93 or detracts from a national purpose.*

Contract Law

In addition to legislative control over education, the common law has established relationships between employer and employee. Contracts of employment between employer and employee were determined by legislative enactments and the common law.

Prior to the middle of the nineteenth century, law relating to employment was almost entirely represented by a body of common law rules defining the relationship of master and servant. At that time, the master (employer) had a separate contract with each servant (employee). The individual contract is still commonplace today and the law of master and servant still has an important influence on the relationship between employers and employees. The relation of master and servant is established in contract and gives the employer authority to direct and control the work of the employee. Employees then make themselves available to their employers, during hours of employment, to perform the services for which they are hired. If either party to the contract agreement expresses a desire to terminate the contract, it may be done by mutual agreement, according to common law or according to statute.

Smyth and Soberman (1976:442) indicate the following exception:

---

*For a more detailed account see Schmeiser (1964:Chp. IV).

when an employee has been hired for a stated period of time and that time has elapsed, notice terminating the contract agreement is not necessary on the part of either employer or employee. Neither party has any right to expect anything more than the cessation of employment at the end of the specified time.

If a contract does not specify the term or duration of the contract then common law implies that a term of reasonable notice shall be given. A court would have to determine how much time was reasonable and that would depend on the circumstances of the case. Smyth and Soberman (1976: 444) also mention that an employer is not in breach of the employment contract if, in dismissing the employee without notice, he tenders an additional amount of pay for a period equal to the length of time required for reasonable notice. It is also noted by Smyth and Soberman (1976:444) that when an employee proposes to leave of his own accord, he has a contractual obligation to give his employer the same amount of notice as he would be entitled to receive himself.

In response to the problem of what constitutes cause, some employees have gained additional protection by statute however common law has tended to classify grounds for dismissal without notice. Cheshire and Fifoot (1972:566) indicate that dismissal without notice by an employer is not justified unless the conduct of the employee was a deliberate attempt to disregard essential requirements of the contract.

Grounds for dismissal without notice as identified by Smyth and Soberman (1976:445-446) are as follows:

1. Misconduct--misconduct against an employer, is not a crime in itself. An employee convicted for gross immoral conduct or a crime which involves moral turpitude could be summarily dismissed.
2. Disobedience--willful disobedience of a reasonable and lawful order from an employer is grounds for immediate dismissal without notice.

3. Incompetence--if an employee accepts a position on the understanding that he is capable of doing a particular job and it becomes apparent that he cannot do the work satisfactorily, his employer may then dismiss him without notice.

4. Illness--permanent disability or constantly recurring illness entitles an employer to terminate without notice.

Termination for any of the above personal failures of performance by an employee relieves the employer of the duty to give notice unless there is a specific statute or clause in the contract of employment or collective agreement prohibiting such action. As far as Canadian teachers are concerned, each province and territory has enacted legislation with regard to tenure and termination of contract.

Teacher Tenure

Tenure has been described as a form of job security. To be without job security means that a contract of employment is subject to termination without just cause and without conformance to any procedures or to the rules of natural justice. Tenure protects teachers against indiscriminate termination by their employer. Acceptable reasons and procedures for releasing teachers are established in statutes or precedents set in courts. McCurdy (1968:68) defined tenure as "a set of rights conveyed and protected by law whereby a teacher cannot be dismissed from his position except under provisions laid down by statute."

Czuboka (1975:13) summarizes United States cases:

> Using examples from the U.S. experience it has been established that tenured teachers may be released for not living up to reasonable conditions of leaves-of-absence; for refusing to cooperate with classroom supervisors; for out-of-school behavior which is socially unacceptable in the community; and for refusing to up-grade teaching qualifications by means of in-service training. Conversely, it seems that tenured teachers may not be released for wearing beards; for being "controversial" persons; for engaging in private homosexual acts; or for refusing to carry out extra curricular duties which are not directly related to the school program.

In Canada, a teacher is deemed to have tenure after serving a probationary period which varies from one province or territory to another. The basic purpose of tenure is to protect teachers who have successfully completed their probationary period from unjust termination of contract for unfounded personal, political or religious reasons during competent performance of their duties. A tenured teacher has rights conveyed by law and cannot be terminated except under procedures contained in statutes, regulations or collective agreements.

Although the concept of tenure as job security is a commonly accepted notion, Kerans (1972:4) points out that ". . . it would be more correct to talk, not about tenure, but how much tenure." One question addressed in this study focuses on the amount of tenure possessed by Canadian teachers. One factor that contributes to the amount of tenure possessed by teachers is the concept of natural justice.

Natural Justice

The Board of Reference, or other tribunal established to hear teacher termination cases, acts as an administrative tribunal that exercises a quasi-judicial function. In conducting its affairs, an administrative tribunal proceeds in accordance with the rules of natural justice as indicated by Gall (1977:264).

The term "natural justice" expresses a close relationship between common law and moral principles. It originates in English law as explained by de Smith (1968:135).

> English law recognizes two principles of natural justice: that an adjudicator be disinterested and unbiased (*nemo judex in causa sua*) and that the parties be given adequate notice and opportunity to be heard (*audi alteram partem*).

Gall (1977:265) also outlines the two basic rules of natural justice:

> 1. The *audi alteram partem* rule in literal translation dictates that both parties to a dispute must be heard. One requirement under this rule is that there must be a fair hearing. Included therein are the related notions that each party has a right to receive notice of a hearing, and, during the course of a hearing, each party has the right to rebut the evidence adduced, to cross examine witnesses and to obtain legal representation, if desired.
>
> 2. The *nemo judex in causa sua* rule includes, essentially the notion that all forms of bias must be excluded from the considerations of administrative tribunals.

If there is to be a fair hearing, the decision maker(s) must hear both sides, give each party an opportunity to state its case and give notice to any person who may be affected by the decision. The right to a hearing is not necessarily a right to a personal hearing before the decision maker(s). The person affected may be represented at a hearing or may make a written presentation.

Proof of bias is very difficult in most cases. Decision makers may be considered to have bias if rational persons believed that bias existed. Absolute proof of bias is not necessary, however, there does have to be a strong possibility of bias existence. Decision makers are automatically believed to have bias if they have a monetary interest in the outcome of the case.

In addition to the basic rules of natural justice, advance notice of the reasons for termination are usually required. Also, reasons for termination are derived from an inquiry.

Summary

By virtue of section 93 of the B.N.A. Act administration and operation of the school system is determined by the province in which the teacher is employed. Although a teachers' contract could be terminated by a local governing body, the reasons (if any) and procedures for termination would be contained in a provincial statute in most instances.

An awareness of all aspects of the law that affect teachers as professionals would be an asset. For example, contract law is one legal area that affects teachers. Although the concept of master and servant is somewhat outdated, the concept of employer and employee is commonplace and some of the same stigmas are carried with it. Teachers as employees in most instances are subject to termination of contract by their employer and should be familiar with common law and statutory enactments related to the termination of their contracts.

Teachers are said to have tenure after serving a probationary period. The time required to establish tenure varies from each province or territory to another. The purpose of tenure is to protect teachers from unjust termination.

The rules of natural justice also protect teachers from unjust termination. Administrative tribunals exercising a judicial or quasi-judicial function are required to abide by the rules of natural justice. The essential requirements of the rules of natural justice are:

1. there must be a fair hearing; and
2. all forms of bias must be excluded.

CHAPTER III

PROVINCIAL AND TERRITORIAL PROCEDURES

Introduction

Inasmuch as education is a function of each province and territory, one might expect diversity in procedures for terminating teacher contracts across Canada. In this chapter, statutes, regulations and collective agreements are examined to determine similarities and differences in procedures and statutory reasons for termination of teacher contracts across Canada.

Alberta

In Alberta, procedures related to the termination of teacher contracts are contained in The School Act (Appendix A).

Case law has established that school boards are required to give teachers written notice of intent to terminate. Such notice of intent usually contains reasons for possible termination and invites the teacher to attend a board meeting to indicate why his contract should not be terminated. Following a meeting with the school board, a board may decide to issue a notice of termination of contract by giving thirty days notice in writing of their intention to do so. Such a notice may be given at any time except within thirty days preceding or during a vacation of fourteen or more days. The notice must include reasons for the termination.

When a teacher's contract is terminated by a school board, the teacher may appeal the termination to the Board of Reference within fourteen days from receipt of the notice of termination. The written appeal must contain reasons given by the board for termination. Also, it should give some indication for contesting the board's decision, and it must be sent to the Minister of Education by registered mail along with a fifty dollar certified cheque or money order as a deposit.*

The Board of Reference is composed of one person from a panel of judges. All evidence is given under oath and cross examination is allowed. The school board must first state its case and register supporting evidence. The teacher, who is represented by counsel, then has the opportunity to rebut the case by introducing witnesses and testifying himself. The Board of Reference may hold that the teacher be reinstated, the school board acted reasonably in termination the contract or that the board award damages. The decision of the Board of Reference is final unless it can be shown that there was an error of law on the face of the record.

British Columbia

In British Columbia procedures related to termination of contract and teacher dismissals are contained in The Schools Act and the Public Schools Act Regulations (Appendices B and C).

British Columbia has two distinct routes to teacher termination. If three successive reports indicate that the learning situation in a class or the performance of the teacher is less than satisfactory the matter is referred to as a termination of contract and directed to a Review Commission if the termination is contested. If termination is for any other reason the matter is referred to as a dismissal and directed to a Board of Reference if the dismissal is contested.

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*e.g. The rules of natural justice were not followed; the period of notice was inadequate; the board did not act reasonably; statutory provisions were not followed.

Review Commission. If three unsatisfactory reports over a period of more than twelve months and less than twenty-four months lead to the conclusion that a learning situation or the performance of the teacher is less than satisfactory, the teacher can be terminated. Reports must be made by a district superintendent, director or principal and the principal's report must be at least one of the three reports. When more than one report is written by the same person, at least six months must have elapsed between writing of the reports. The school board may, upon receipt of one or more negative reports and with the agreement of the teacher, recommend that the teacher undertake an upgrading program either with or without pay.

School boards are required to give teachers written notice of intention to terminate a contract at least thirty days prior to the issuance of a notice of termination of contract. The notice must set a time for a hearing within twenty days of issuance of the notice of intention. Teachers must be given an opportunity to be interviewed by the District Superintendent of Schools and the school board or a committee of the board. The teacher is entitled to counsel during the interview.

If, after the above process, a school board decides to terminate a teacher's contract, the teacher has ten days to request that the Minister establish a Review Commission to review the termination. The Minister, upon receipt of a request, must direct the chairman of the Commission to proceed with a review of the termination. The Commission is comprised of three members. Two members are appointed by the Minister, one of whom is chosen from among the members nominated by the executive of the British Columbia Teachers' Federation (B.C.T.F.) and one chosen from among the members nominated by the British Columbia School Trustees Association (B.C.S.T.A.). The chairman is appointed by the Minister. All members appointed to the Commission are persons actively engaged in education in the province and not members of the staff of either the B.C.T.F. or B.C.S.T.A. Decisions of Commissions are final and binding upon teachers and school boards.

Board of Reference. In British Columbia teacher dismissals are preceded by a suspension but not all suspensions would necessarily result in a dismissal. A teacher may be suspended either with or without salary at any time for misconduct, neglect of duty, refusal or neglect to obey a lawful order of the school board or a criminal offence charge. If a teacher is acquitted of the charge he is reinstated immediately. Where a teacher is dismissed for gross misconduct he is not entitled to any notice. School boards are required to give teachers an interview with the Superintendent of Schools and the school board or a committee of the board within seven days following suspension. The teacher is entitled to counsel during the interview. Following an interview, the school board has another seven days to either reinstate the teacher or dismiss him on the same grounds as his suspension. A notice of dismissal is effective not longer than thirty days following the mailing of the notice.

A teacher has ten days, following receipt of notice of dismissal, to appeal the dismissal to the Minister. The Minister must refer an appeal to the Board of Reference. The Board of Reference is comprised of three members appointed by the Minister. The chairman is appointed from among members nominated by the Chief Justice. One member is appointed from among persons nominated by the executive of the B.C.T.F. and one member appointed from among persons nominated by the executive of the B.C.S.T.A.

The Board of Reference may allow or disallow the appeal and its decision is final and binding if not appealed to the County or Supreme Court within thirty days.

Manitoba

In Manitoba all procedures related to termination of teacher contracts are contained in The Public Schools Act (1970) (Appendix D). The standard contract known as Form 6 is a statutory requirement (Appendix E).

According to legislation either party terminating a contract may, within seven days, request that the other party give a reason for terminating the contract. The party terminating the contract must give the reason for termination within seven days. If the reason for termination is related to the incompetency or character of the teacher, the teacher must be given the opportunity to appear before the school board to speak to the complaint before the contract is terminated. Teachers must be given thirty days notice prior to June 30 or December 30 or thirty days notice at other times if it is an emergency.

Manitoba teachers have tenure after two years of employment with a given school district. A tenured teacher may appeal a termination of contract to an Arbitration Board.

An appeal to the Arbitration Board must be filed within seven days from receipt of reasons for termination. An Arbitration Board is composed of one representative appointed by the teacher, one representative appointed by the board and a chairman mutually acceptable to the other two.

An Arbitration Board must decide if the reason given by the school board constitutes cause for terminating the contract of employment. In the event that the Arbitration Board cannot agree on a decision, the chairman makes the decision and that decision is deemed to be the decision of the Arbitration Board. Although The Schools Act says that the decision of the Arbitration Board is binding upon the parties there is an appeal available to the Manitoba Court of Appeal. In the event that the chairman of the Arbitration Board makes the decision for the Board, a minority report is usually written by one of the members of the Board. When a minority report is made, it is usually grounds for appeal to the Manitoba Court of Appeal.

New Brunswick

Sections of the New Brunswick Schools Act (1973) that relate to termination of teachers' contracts are contained in Appendix F. The collective agreement negotiated between the New Brunswick Teachers' Association and the Treasury Board for the Province of New Brunswick also includes clauses related to the termination of teacher contracts (Appendix G).

In New Brunswick clauses in both the Schools Act and the collective agreement determine procedures to be utilized in the termination of teacher contracts in that province. In the event of a conflict between the two documents the collective agreement takes precedence. It is, therefore, necessary to examine both documents in order to determine procedures for the termination of teacher contracts.

A school board may terminate a teacher's contract for just cause. Notice of termination must be given prior to May 1 preceding the end of the school year and must contain reasons for terminating the contract. Only reasons that have been recorded in the teachers' personal file may be used against the teacher.

Termination for incompetence is without recourse to appeal provisions in the collective agreement if termination has been preceded by a review of the teacher's personal file and the file contains evaluation reports which substantiate incompetency.

Following receipt of a termination notice a teacher may, within thirty days, file an appeal under the grievance procedure in the collective agreement. The first step in this process is the presentation of the grievance to the District Superintendent who arranges to hold a meeting with representatives from the local branch of the teachers' organization. The superintendent makes his decision known to the aggrieved parties following the presentation.

If step one is not accepted, the teachers' organization deposits the grievance with the secretary of the school board. A meeting is arranged between the school board and the teachers' organization. The school board decision constitutes the final level of the grievance process.

If the grievance has not been dealt with to the satisfaction of the teacher, he may refer the grievance to adjudication within twenty teaching days.

The adjudication process is established under the Public Service Labour Relations Act. An Adjudicator or Board of Adjudication, as the case may be, gives the parties to the grievance an opportunity to be heard. Following the presentation of arguments the Adjudicator or Adjudication Board renders a decision which is binding upon the parties.

Newfoundland

In Newfoundland all procedures related to the termination of teacher contracts are contained in the collective agreement (Appendix H).

School boards in Newfoundland may terminate a teacher's contract by giving three months notice (or pay in lieu of notice) if the contract is to be terminated during the school year or two months notice (or pay in lieu of notice) if it is to be terminated at the end of the school year. Adequate reasons for termination must be given with the notice. A teacher may be terminated without notice for gross misconduct, insubordination, neglect of duty or if the teacher refuses to undergo a medical examination whereas thirty days notice must be given for incompetence.

If a teacher wants to contest the termination, the first avenue is the grievance procedure in the collective agreement. A grievance must be submitted to the Superintendent within ten calendar days. If the Superintendent's decision does not result in settlement, the teacher may submit the grievance to the chairman of the school board within ten calendar days from receipt of the decision. If the decision of the chairman does not result in settlement the teacher may, with the consent of the Association, submit the grievance to arbitration within seven calendar days from receipt of the chairman's decision.

The teacher, when submitting his grievance to arbitration, must appoint an arbitrator, the school board, following receipt of the grievance, also appoints an arbitrator. The two arbitrators must then appoint a third arbitrator as chairman. The Arbitration Board hears the case and renders a decision. The decision of the Board is binding upon the parties.

Northwest Territories

In the Northwest Territories procedures for termination of teacher contracts are contained in the Education Ordinance (R.O. 1977), and Regulations for an Ordinance Respecting Education (1977). Agreements between the Northwest Territories Teachers' Association and Yellowknife Education Districts No. 1 and No. 2 contain clauses that modify and in some instances change provisions in the Ordinance and Regulations (Appendices I, J, K and L respectively).

A teacher has tenure in the Northwest Territories following two years with the same employer. A tenured teacher may be dismissed for cause or incompetence at any time. If termination is a result of staff reduction the teacher may only be terminated at the end of the school year and notice must be given at least thirty days before the closing day of school or April 30 whichever date occurs first. In any event, written reasons for termination must be given. A teacher may also be suspended for up to ten days with pay if the Superintendent believes that grounds exist for dismissal. Within the ten day period, the employer has to either cancel the suspension or dismiss the teacher.

A teacher who is dismissed for cause or for incompetence may appeal the decision to a Board of Reference within twenty days after receipt of the notice of dismissal. The Board of Reference consists of a teacher nominee, an employer nominee and a chairman appointed by the two nominees. The Board of Reference may compel witnesses to attend and require that evidence be given under oath. The principles of natural justice are applied to the hearing but strict rules of evidence are not followed. The Board of Reference has the authority to reinstate the teacher, uphold the dismissal or make any other order. The decision of the Board of Reference is binding upon the parties.

Nova Scotia

In Nova Scotia all procedures related to termination of teachers' contracts are contained in the Education Act (1972) (Appendix M).

School boards in Nova Scotia may terminate a teacher's contract for just cause or declining enrolments. In any case the reason must be stated and the teacher given an opportunity to appear before the board. Notice of termination may be given at any time for just cause or by the 30th of April, to be effective at the end of the school year. Upon receipt of a notice of termination, the teacher has twenty days in which to appeal the termination to the Minister. The Minister is required to establish a Board of Appeal which is composed of one person. The decision of the Board of Appeal is final and binding.

Ontario

In Ontario procedures for termination of teachers' contracts are contained in The Education Act (1974) and included in this study as Appendix N. The Regulations Under the Education Act contain the standard contract forms and a section dealing with reporting procedures (Appendix O).

Notice of termination of contract must be given at least by November 30 to take effect on December 31 or by May 31 to be effective on August 31. Termination at any other time may only take place by mutual consent. The school board must state reasons for termination of contract, however, a hearing by the school board is not required. If the teacher feels that the reason given for termination of contract is not justified he may apply to the Minister for a Board of Reference hearing within twenty-one days from receipt of notice of termination. When the application is made the teacher must state his disagreement with the termination.

When an application for a Board of Reference hearing is received by the Minister an inquiry into the disagreement is made by personnel from the Department of Education. Following investigation, the Minister either refuses or grants a hearing by the Board of Reference.

Applications for a Board of Reference hearing can be refused on technical grounds. Examples of such refusal may be receipt of the application after the time limit, or the fact that the applicant does not possess a permanent contract of employment or a valid teaching certificate. Applications are also refused where the reason for termination is a clear case of redundancy of where the reason for termination was so convincing that the Minister considers that the granting of a Board of Reference is not justified. If the Minister refuses to grant a Board of Reference hearing there is no appeal to that decision.

If the Minister grants a Board of Reference hearing, he appoints a judge to act as chairman of the Board. The teacher and the school board each nominate one person to serve on the Board of Reference. The Board must convene within thirty days of the appointment of the chairman. Following the hearing by the Board of Reference, the Board may direct the continuance or discontinuance of the contract. In either case, the decision of the Board of Reference is binding upon the parties.

Prince Edward Island

In Prince Edward Island procedures for termination of teacher contracts are contained in the School Act (1974), The School Act Regulations and the collective agreement (Appendices P, Q and R).

Because Prince Edward Island is such a small area it has only five school boards. In Prince Edward Island the school board may terminate a teacher for cause or unsatisfactory service and pending finalization of its decision suspend the teacher for not more than ten days. When a teacher is suspended, the reasons for the suspension must be given. Upon receipt of a notice of suspension, a teacher may request a hearing before the school board within eight days. Following the board hearing, the board may issue a termination notice stating the reason for the termination and the effective date.

The teacher may, within thirty days from receipt of notice of termination, request that the Minister establish a Board of Reference. The Minister is required to establish a Board of Reference consisting of a nominee by the teacher, a nominee by the school board and a third member as chairman appointed by the two nominees.

The Board of Reference has ten days in which to arrive at a decision. The decision of the Board of Reference is final and binding upon the parties.

Quebec

Procedures for termination of teacher contracts in Quebec are contained in the Education Act, provincial collective agreements and local collective agreements. Although the Education Act is printed in both English and French, the majority of the collective agreements are printed in French only. For the purposes of this study the Education Act is the only document that will be examined (Appendix S).

Section 212 of the Education Act indicates that a teacher is engaged for a school year or to complete a school year. Only in special cases approved by the Minister is a teacher engaged for more than one school year. In most cases termination of contracts can only take place during the contract period, that is, during the school year. There is provision for appeal of non-renewal of contract to the arbitration procedure set out in the collective agreement.

In Quebec a school board may terminate a contract for incompetency, neglect of duty, insubordination, misconduct or immorality. The school board is required to call a meeting for the purpose of considering information relevant to any of the above reasons.

A teacher whose contract is terminated may submit the matter to arbitration in accordance with procedures in the collective agreement. The Board of Arbitration is comprised of a chairman appointed by the Minister, one appointee by the school board and two appointees by the teacher organization. The Board of Arbitration has the duty to determine if proper procedures have been followed and whether the reasons alleged by the school board support termination and constitute one of the causes stated above. The Board of Arbitration may upset the decision of the school board to terminate, uphold the decision of the school board or determine compensation for the teacher. The decision of the Board of Arbitration is final and binding upon the parties.

According to section 218 of the Education Act, teachers must submit a physician's certificate stating that they are fit to teach and a certificate indicating that they are free from tubercular disease. These certificates must be submitted every year in order to retain a teaching position.

Saskatchewan

For the period of time covered by this study, provisions for termination of teacher contracts were contained in The Teacher Tenure Act and The School Act (1965) (Appendices T and U).

On January 1, 1979, The Education Act (1979) came into force. All provisions for the termination of teacher contracts in Saskatchewan are now included in the one piece of legislation (Appendix V).

All cases referred to in this study were based on the old legislation, therefore procedures stipulated in the old legislation are explained in this chapter. Although no cases referred to in this study are based on the new legislation, the procedures laid out in the new legislation are also explained in this chapter.

The Teacher Tenure Act applied only when a notice of termination of contract was to take place on June 30. Notice of the termination had to be given not later than May 25 in the year in which it was to take effect. A notice of termination of contract under The Teacher Tenure Act had to include the reasons for the school board's action and could include professional incompetency, neglect of duty, unprofessional conduct, immorality, physical or mental disability and such other cause that in the opinion of the board rendered the teacher unsuitable for teaching. The teacher was given the opportunity to be present at a school board meeting to give reasons why his contract ought not be terminated. If the matter was not resolved at the hearing in front of the school board, then the teacher could appeal to the Minister within five days of the meeting or if the meeting was not held, within twenty days of receiving notice to have the matter heard by a Conciliation Board. The Minister, in his discretion, could refer the matter to a Conciliation Board.

The Conciliation Board consisted of three members, one named by the Saskatchewan Teachers' Federation (S.T.F.), one by the Saskatchewan School Trustees Association (S.S.T.A.) and a chairman chosen by the other two, or if they could not agree, a chairman was chosen by the Minister. The findings of the Conciliation Board were binding only if agreed to in writing beforehand or within ten days of the making of the report.

Conciliation Boards had considerable latitude as to place, time and manner of conducting the conciliation. They also had the right to administer oaths and to subpoena witnesses.

The School Act (1965) applied when a notice of termination of contract was to take place on a date other than June 30 by giving the teacher not less than thirty days notice. Reasons for the intended termination had to be set forth in the notice. Teachers had ten days following the notice of intent to apply to the school board for an opportunity to be heard by the board to show cause why the contract should not be terminated. If the matter was not resolved at that meeting, teachers had fifteen days in which to apply to the Minister for a Board of Reference. The Minister was required to appoint a Board of Reference composed of one member appointed by the teacher, one member appointed by the school board and a chairman appointed by the Minister. The Board of Reference had thirty days, following the appointment of the chairman, to make a decision. The Board of Reference had the power to subpoena witnesses and to administer oaths. The Board of Reference could confirm the termination, order reinstatement of the teacher or make other orders. The decision of the Board of Reference was final and binding upon the parties.

The Education Act (1979) contains all the procedures for termination of teacher contracts in this one piece of legislation. The Act sets out four routes for the termination of teacher contracts.

The four routes are:

1. Suspension or dismissal without notice. In Saskatchewan a teacher may be suspended or dismissed without notice for gross misconduct, neglect of duty or refusing or neglecting to obey any lawful order of the board. Within five days of termination a teacher may request written reasons for the termination and the board must provide the reasons.
2. Surplus teachers. Where a teacher is employed in a position that is no longer considered necessary, a board may terminate the contract on thirty days notice. Reasons must be stated in the notice.
3. Termination effective June 30. Notice of termination must be given no later than May 31 to be effective June 30. Reasons must be stated and may include professional incompetency, unprofessional conduct, immorality, neglect of duty, physical or mental disability, or any cause which in the opinion of the board renders the teacher unsuitable for the position held.

4. Termination effective on a date other than June 30. Thirty days notice is required for termination of contract to be effective on a date other than June 30. Reasons must be stated and they may include any of the reasons stated in (3) above.

Any notice to terminate a teacher's contract must state that the teacher may, within ten days of receipt of the notice, apply to the school board for a meeting to show cause why the contract should not be terminated. The board is required to provide for such a meeting.

A teacher has twenty days, from the date of the postmaster's receipt of the envelope containing the notice of termination, to apply to the Minister for an investigation of the termination by a Board of Reference.

The Minister is required to appoint a Board of Reference comprised of one person nominated by the teacher, one person nominated by the school board, and a chairman named jointly by the two people.

The Board of Reference has thirty days, following the appointment of the chairman, to make its decision. The Board of Reference may confirm the termination, order continuation of the contract or make any order or recommendation. The Board can require witnesses to attend and administer oaths.

Decisions of the Board of Reference are reviewable if an application is made by either party to the Court of Queen's Bench within ten days of the filing of the decision. Grounds for filing an appeal are stated as:

1. an error of law on the face of the record;
2. lack of jurisdiction by the Board of Reference to hear the matter; and

3. evidence to indicate that the Board of Reference exceeded its jurisdiction.

Yukon

In the Yukon procedures for termination of teacher contracts are contained in the School Ordinance (Appendix W).

Reasons for termination of contract in the Yukon are the same as the reasons for suspension. In fact, the processes for suspension and termination are intertwined. Reasons for suspension or termination are misconduct, neglect of duty, refusal or neglect to obey a lawful order, incapability, unsatisfactory performance, or a teacher being charged with a criminal offence where circumstances render it inadvisable to continue teaching.

A Superintendent, who suspends a teacher, may make a recommendation for termination of contract. Reasons must be given with the recommendation for termination, however, no period of notice is stated in the statute. A teacher may appeal the suspension and the recommendation for termination to the Superintendent. If the teacher appeals to the Superintendent, the teacher is given the opportunity to be heard. Following a hearing, the Superintendent may make a recommendation to the Commissioner that the teacher's contract be terminated. The Commissioner must terminate the contract upon receipt of the recommendation from the Superintendent.

Upon receipt of a notice of termination of contract the teacher has two weeks in which to file an appeal to an adjudicator. Such an adjudicator, appointed by the chairman of the Yukon Teacher Staff Relations Board, then makes a decision which is final and binding to both parties.

Procedures Compared and Contrasted

Statutory reasons for terminating teacher contracts are outlined in Table 1 (page 39). An examination of Table 1 reveals that reasons for termination are enumerated in most statutes. If reasons are not enumerated, school boards are still required to give reasons for termination. Common statutory reasons for termination of teachers' contracts appear to be neglect of duty, incompetence, misconduct and refusal or neglect to obey a lawful order of the board. The above reasons may be extremely broad and meaningless if not elaborated upon, therefore, school boards, when terminating a teacher's contract, must usually be more specific. This would be particularly true when the statutory reason is given as "cause" or "just cause." The question then, also becomes what constitutes "cause" or "just cause"? In any event, the appeal body would have to decide if the reasons for termination were proven and if they were sufficient to justify termination of the teacher's contract.

Tables 2(a) and 2(b) (pages 41 and 43) outline other statutory requirements for termination and appeal of teachers' contracts. It is noted from Table 2(a) that most provinces have a probationary period, ranging from nine months to three years, before teachers receive tenure. A two year probationary period appears to be most common. In British Columbia the teacher's initial appointment is continuous but he may be put on probation during his first nine months of employment. Quebec teachers are employed on one year renewable contracts and do have access to appeal procedures if their contract is terminated or if they are not re-engaged for the next school year. The probationary period is noted because probationary teachers do not have tenure and, in most instances,

Table 1

Statutory Reasons for Teacher Terminations

Province or Territory	Statutory Reasons
Alberta	No reasons stated. Board required to give reasons and act reasonably.
British Columbia	Dual Process: a) learning situation or performance less than satisfactory. b) misconduct, neglect of duty, refusal or neglect to obey a lawful order of the board or convicted of criminal charge.
Manitoba	Dismissed teacher may request reasons within seven days of notice.
New Brunswick	Reasons must be stated by Board, no reasons stated in collective agreement.
Northwest Territories	For cause or incompetence.
Nova Scotia	Just cause or declining enrolment.
Ontario	No reasons listed in statute. Board required to provide reasons.
Prince Edward Island	For cause or unsatisfactory service.
Quebec	Insubordination, misconduct, immorality, incompetence or neglect of duty.
Saskatchewan (Old Acts)	Teacher Tenure Act--professional incompetency, neglect of duty, unprofessional conduct, immorality, physical or mental disability or other cause.
	The School Act (1965)--No reasons stated. Reasons required.

Table 1 (Continued)

Province or Territory	Statutory Reasons
Saskatchewan (New Act)	a) Without notice for: gross misconduct, neglect of duty, refusing or neglecting to obey a lawful order of the board, but board shall provide reasons if teacher requests within five days. b) With notice for: professional incompetency, unprofessional conduct, immorality, neglect of duty, physical or mental disability or other cause.
Yukon	Misconduct, neglect of duties, refusal or neglect to obey a lawful order, incapable or unsatisfactory service.

Table 2(a)

Appeal Procedures for Teacher Terminations

Territory or Province	Probationary Period	Termination Notice	Hearing by School Board	Represented by Counsel	Special Circumstances
Alberta	1 year	30 days	yes	yes	Single adjudicator
British Columbia	1st 9 months	a) 30 days	a) yes	a) yes	a) Termination effective end of school year or an agreed date.
		b) variable	b) yes	b) yes	b) Dismissal anytime for gross misconduct
Manitoba	2 years	30 days	sometimes	yes	Hearing by school board for incompetence or character
New Brunswick	3 years	Before May 1 effective end school year, otherwise 10 days	yes	yes	Notice of termination must contain reasons previously recorded in teacher's file. Procedures in School Act and collective agreement.
Newfoundland	2 years	3 months (during school year) 2 months (end school year) 30 days for incompetency	yes	yes	All procedures contained in collective agreement. School Act is silent.
Northwest Territories	2 years	anytime	yes	yes	Statutory provisions modified by collective agreements

Table 2(a) (Continued)

Territory or Province	Probationary Period	Termination Notice	Hearing by School Board	Represented by Counsel	Special Circumstances
Nova Scotia	2 years	April 30 effective end school year or anytime for cause	yes	yes	A one person Board of Appeal.
Ontario	<3 years experience, 2 years probation >3 years experience, 1 year probation	By November 30 to be effective December 31 or by May 31 to be effective August 31	no	yes	Minister investigates request for Board of Reference. Minister may refuse Board of Reference. No appeal.
Prince Edward Island	3 years	Before May 1, effective end school year. Anytime for cause or unsatisfactory service.	yes	yes	Other than May 1 period of notice is flexible.
Quebec	1 year contract	Before May 1, effective end of school year.	yes	yes	Termination occur only during year, non re-engagement at end of school year.
Saskatchewan (Old Acts) (New Act)	a) 2 years b) 2 years 2 years	By May 25 30 days 30 days	yes yes yes	yes yes yes	Minister may refuse to grant conciliation board.
Yukon	2 years	Not stated	yes	yes	Single adjudicator

Table 2(b)

Appeal Procedures for Teacher Terminations

Territory or Province	Appeal Body	Notice of Appeal	Composition of Appeal Body	Appeal
Alberta	Board of Reference	14 days	One judge chosen from panel of judges.	No
British Columbia	Review Commission	10 days	3 members appointed by Minister from among members nominated by BCTF and BCSTA.	No
	Board of Reference	10 days	3 members appointed by Minister from nominees by a) Chief Justice, b) BCTF, c) BCSTA	Appeal to County or Supreme Court within 30 days
Manitoba	Board of Arbitration	7 days after reasons received	1 representative appointed by teacher, 1 representative appointed by board, 1 chairman acceptable by other two.	Manitoba Court of Appeal
New Brunswick	Grievance and Adjudication	30 days to grievance 20 days to adjudication	Grievance Committee--teacher, superintendent, NBTA rep. Single adjudicator	Court of Appeal
Newfoundland	Arbitration Board	10 days to grievance 7 days to arbitration	1 chairman acceptable to both parties, 1 appointed by teacher, 1 appointed by board.	No
Northwest Territories	Board of Reference	20 days	1 nominee of teacher, 1 nominee of employer, 1 chairman appointed by nominees	No

Table 2(b) (Continued)

Territory or Province	Appeal Body	Notice of Appeal	Composition of Appeal Body	Appeal
Nova Scotia	Board of Appeal	20 days	One person appointed by Minister	No
Ontario	Board of Reference	21 days	1 teacher nominee, 1 school board nominee, 1 chairman (Judge) appointed by Minister	No
Prince Edward Island	Board of Reference	30 days to Minister 5 days to board	1 teacher nominee, 1 regional board nominee, 1 chairman appointed by nominees	No
Quebec	Board of Arbitration	Varies according to agreement	1 by Minister, 1 by board, 2 by teachers' organization	No
Saskatchewan (Old Acts)	Conciliation Board	20 days	1 STF, 1 SSTA, chairman acceptable by other two	No
	Board of Reference	15 days	1 by teacher, 1 by school board, chairman by Minister	No
(New)	Board of Reference	20 days	3 members appointed by Minister, 1 nominated by teacher, 1 nominated by school board, 1 nominated by above two.	Yes
Yukon	Adjudicator	2 weeks	Single adjudicator	No

do not have access to appeal procedures if the school board does not wish to retain the teacher on staff.

Notice for termination varies considerably, with a range of immediate termination to three months notice. Thirty days notice appears to be the most commonly accepted procedure.

Most provinces have a three person appeal body. The exceptions to the rule are Alberta, New Brunswick, Nova Scotia and the Yukon. Each of the above have a one person board of appeal. The right of appeal is automatic in all provinces, however, in Ontario the Minister of Education may refuse to grant a hearing by the Board of Reference. There is no appeal to the Minister's decision.

In most provinces and territories, termination and appeal procedures are contained in a school act. However, there are exceptions. In Newfoundland all procedures are contained in the collective agreement and are therefore negotiable. New Brunswick, Quebec and the Northwest Territories have some procedures in a school act and these procedures are either elaborated or modified by clauses in collective agreements.

Most statutes state that the decision of the appeal body is final and binding on the parties. British Columbia, Saskatchewan, Manitoba and New Brunswick are the exceptions in that the statutes state that an appeal may be made to a higher court. Even though the statutes state that there is no appeal, access to the court is still possible by way of judicial review, which will be discussed in more detail later.

Appeal bodies are not always bound by the strict rules of evidence. The appeal body is usually charged with the task of determining facts by any appropriate means; they may be permitted to adopt inquisitorial procedures, consult experts and use their own technical knowledge and past experience which may be based on evidence given in previous cases or their decision may be based on broad considerations of public policy. Nevertheless, appeal bodies are obligated to act in accordance with the rules of natural justice.

In the event that an appeal body is required to follow the rules of evidence the only admissible information would have to be obtained from witnesses under oath and subject to cross examination. Circumstantial evidence has to be corroborated by evidence given by someone else. Hearsay evidence is not permitted because the original speaker is not on the witness stand.

CHAPTER IV

PROVINCIAL AND TERRITORIAL CASES

Introduction

The lack of cases from Canada's two largest provinces severely limits the scope of this chapter. Ontario cases are heard in camera and hence, are not available for research purposes at this time. Quebec cases, although very numerous, are only published in the French language which further restricted the number of cases available for examination. In addition, Saskatchewan and British Columbia sources requested that unreported cases be anonymous. Furthermore, the Yukon and the Northwest Territories have not had any appeals by tenured teachers and no cases were received from Nova Scotia. Law reports from across Canada were searched and a few higher court decisions were located and are reported under the appropriate provincial heading.

Alberta

The exact number of termination of contract cases that have been heard by the Board of Reference from 1970 to 1979 has been difficult to determine as the records in this regard are not systematic. In a number of cases in the early 1970's the decision and order by the Board of Reference does not contain any reasons for judgment. Availability and completeness of written documentation limited the investigation of Alberta cases. However, written judgments with varying amounts of information have been located for nineteen cases that involved twenty-three teachers (one case involved five teachers). In nine of the nineteen cases appealed to the Board of Reference the teacher was reinstated, teachers lost seven appeals and damages were awarded in three cases.

The School Act does not specify reasons for termination, therefore reasons given by school boards are varied. For the purpose of this study reasons were grouped into six categories. Only four categories were utilized in Alberta. Of the nineteen cases, nine cases (thirteen teachers) involved elimination of position, six were for incompetence, two for misconduct and two for insubordination.

In the nine elimination of position cases, the appeal was dismissed in four cases, damages were awarded in three cases and in two instances the teacher was reinstated. In the four cases that were dismissed the specific reasons that were upheld by the Board of Reference were:

1. desire of school board to replace a teacher-librarian with a library technician;
2. declining enrolment;
3. replacement of biology and chemistry teachers with one teacher trained to teach both subjects; and
4. the teacher's return to staff, following a disabling accident, was unknown and his position had been filled.

Damages awarded in three cases varied from two months' to nine months' salary. In the two reinstatement cases, one was based on technical grounds and in the other the Board of Reference found that the school board had acted prematurely.[1]

In the six incompetence cases the appeal was allowed in four cases and dismissed in the other two. Of the four cases where reinstatement occurred, two were based on technical grounds and incompetence was not proven in the other two. In the two cases that were dismissed, incompetence was proven. Reasons for incompetence were given as:

1. general dissatisfaction with teaching service; and
2. failure to adjust teaching practices in compliance with suggestions.

In both cases where insubordination was given as a reason for termination, the teacher was reinstated. In one case the teacher was reinstated because the school board had not abided by the rules of natural justice and in the second case the Board of Reference decided that the school board had not acted reasonably.

In both cases where misconduct had been alleged the teachers were also reinstated. In one instance the Board of Reference indicated that evidence justified severe criticism of the teachers' conduct but was not adequate nor did it justify termination. In the second case the Board of Reference was not satisfied that gross misconduct had been proven.

British Columbia

From 1970 until 1979 twenty-one tenured British Columbia teachers appealed either a dismissal or a termination to a Board of Reference or a Review Commission. Fifteen cases were appealed to a Board of Reference and six to a Review Commission.

British Columbia cases cannot be dealt with individually because anonymity was requested. Cases that were appealed to a higher court and reported in a law report are identified.

Board of Reference cases. In nine of the fifteen cases appealed to Board of Reference, dismissal was deemed to be justified. Reasons for dismissal are stated in statute. All of the reasons stated in the statute were utilized and no other reasons were used. In the fifteen cases, seven stated neglect of duty as a reason, five were for misconduct, two for refusal to obey a lawful order of the board and in one case it was alleged that the teacher had been convicted of a criminal offence.

In seven neglect of duty cases, appeal was allowed in two cases but dismissed in the other five. In the two cases where the appeal was allowed, one was allowed on the basis of a denial of natural justice and the other allowed on the grounds that the teachers were ill hence unable to perform their teaching duties and were not required to apply for a leave of absence. In the five cases that were dismissed specific neglect of duty in each case was stated as:

1. arriving late for school;
2. failure to adequately supervise physical education classes;
3. an extended Christmas vacation without permission;
4. an early summer vacation without authority; and
5. habitual absence from the classroom and being late for class.

In five misconduct cases, appeal was allowed in three cases and dismissed in the other two. In the three cases that were allowed, one was allowed on the basis of a denial of natural justice. In the second case, the misconduct constituted administering corporal punishment to a student in contravention of Department of Education regulation. The appeal was allowed and the teacher reinstated. In the third case, the alleged misconduct was a strong letter of protest the teacher had written to the chairman of the school board and others protesting a change of assignment from full time art teacher to full time substitute. The Board of Reference held that the letter did constitute misconduct but that the penalty was too severe. The teacher was reinstated. In the two cases that were dismissed the specific misconduct was:

1. slapping a student and injuring his ear drum; and
2. striking a student on the cheek causing a bruise.

In both cases where refusal or neglect to obey a lawful order of the board was given as the reason for dismissal, the appeal was dismissed. In one case, the school board warned the teacher about his tardiness and absences from school, however, the absenteeism continued and he was dismissed. In the second case, the school board ordered the teacher to discontinue his association with a young female student. The teacher volunteered to limit public appearances but maintained his association with the girl. The Board of Reference held that the teacher's continued association was misconduct that would likely bring the school board into disrepute and amounted to refusal to obey a lawful order of the school board.

In the one case where the reason for dismissal was given as a conviction of a criminal charge, the appeal was allowed by the Board of Reference. The school board appealed the case to the British Columbia Supreme Court. The case is reported as Board of School Trustees of School District No.37 (Delta) v. Vaselenak, (1977) 82 D.L.R. (3d) 509 (B.C.S.C.). Mr. Vaselenak was charged with possession of a narcotic (marijuana) contrary to the Narcotic Control Act. The school board suspended the teacher under section 130 of the Public Schools Act. When the teacher appeared in court, he pleaded guilty to the charge. On the same date, Court adjudged that Mr. Vaselenak be discharged upon condition of his attendance at the Court Clerk's office, almost one and a half years later swearing a declaration that he had not committed any further criminal offences. The probation order was later varied deleting the condition. The school board moved to dismiss Mr. Vaselenak on the grounds that he had pleaded guilty to a charge of possession of marijuana. On appeal to the Board of Reference, it was held that his appeal be allowed and ordered his reinstatement. The grounds for the decision was that the school board acted without jurisdiction because Mr. Vaselenak had not been convicted of the offence charged against him. The decision of the Board of Reference was upheld by the British Columbia Supreme Court.

Review Commission cases. Review Commissions deal with the matter of an appeal by a teacher when the reason for termination is that the learning situation or the performance of the teacher is less than satisfactory. The first case heard by a Review Commission was in 1973. Up to the present time a total of six cases have been heard by Review Commissions. Of the six cases, two appeals have been allowed and four appeals dismissed. The two cases that were successfully appealed were the first case and the most recent case.

The first case was decided on the matter of the interpretation of the Public Schools Act Regulations. The commission found that Regulation 62 had been violated. Regulation 62 requires "that three reports shall have been issued in a period of not less than 12 nor more than 24 months." The three reports did not meet the requirement of "not less than 12 months." It was also held that the principal's report did not contain a statement to the effect that the learning situation was less than satisfactory as required by Regulation 96(e). The Review Commission directed that the teacher be reinstated.

The second case in which the appeal was allowed, the Commission also ordered that the teacher be reinstated. The Commission based its decision on the following grounds:

1. suggestions for improvement were either vague or lacking;
2. there was no documentary evidence to support the claim that the learning situation was less than satisfactory;
3. the teacher's requests for transfers to another school had been refused; and
4. in general, the case against the teacher had not been proven.

In the four appeals that were dismissed, Regulations 62 and 96 of the Public Schools Act Regulations had been followed, the appropriate reports were written in accordance with the regulations, specific suggestions had been given in the reports, and the learning situation or the performance of the teacher remained less than satisfactory.

Manitoba

Fourteen termination cases have been appealed in Manitoba from 1970 until the present. In nine of fourteen cases appealed to the Board of Arbitration the teacher was reinstated, teachers lost four appeals, and damages were awarded in one case. Of the fourteen cases, six cases involved incompetence as a reason, five involved elimination of position, and one case for each of neglect of duty, misconduct and insubordination.

In the six incompetency cases teachers were reinstated in three cases, the appeal was dismissed in two and damages awarded in the remaining case. Two cases were appealed to the Court of Appeal and in both instances decisions of the Board of Arbitration were reversed. Of the two cases where teachers were ultimately unsuccessful specific reasons that were upheld by the Courts were:

1. a lack of professional judgment;
2. insensitivity to the needs of students;
3. inability to communicate with classes;
4. failure to participate in student activities; and
5. unwillingness to discuss student progress with parents.

In the five elimination of position cases, teachers were reinstated in three instances, and lost their appeal in the other two. Of the three cases where teachers were reinstated the board had tried to terminate because of staff reductions, declining enrolments and changing programs. In each case the Arbitration Board indicated that the reason did not constitute just cause. In two cases where the appeal was dismissed, one was dismissed on the basis that the teacher did not reply to the termination notice within the statutory time limit. The reason for termination in the second case was that the teacher was not prepared to teach in the French language. The Arbitration Board noted that the teacher had been treated unfairly and that it was neither reasonable nor equitable to place a teacher with long service and otherwise unquestioned qualifications in the position of having to learn a second language in a short period of time in order to retain employment. The Board of Arbitration nevertheless, ruled that the reason constituted cause for termination of the agreement. The teacher appealed to the Court of Appeal but the appeal was dismissed.

In the one case classified as neglect of duty the teacher had requested a transfer to an elementary school because classroom management had become very difficult. The board refused the request and terminated her contract because she had requested that she be relieved of her teaching duties and it was not possible to give her an elementary position.

The Board of Arbitration noted that the Form 6 Contract says that, "The teacher agrees to teach diligently and faithfully and to conduct the work assigned by and under the authority of the said district during the period of this engagement . . . ." The Board of Arbitration ruled that the reason constituted cause and the termination was upheld.

In the only case classified as misconduct the teacher's contract was terminated for alleged offensive and suggestive comments to students. The Arbitration Board held that the reasons did not constitute cause and the teacher was reinstated. The school board made a second attempt to terminate the teacher. This time they stated that the reason was ". . . the termination of the Junior High O.E.C. program in which you were employed." The Arbitration Board ruled that the reason stated in the termination notice was not the real reason for termination. The real reason was stated in the first termination. The Arbitration Board held that the reason given did not constitute cause and the teacher was reinstated. The school board then appealed the decision to the Court of Appeal, however the Court of Appeal upheld the award of the Arbitration Board and dismissed the appeal.

Insubordination was used as the reason in only one Manitoba case. The basis for the reason was that the teacher had not attended all staff meetings or parent-teacher interviews. The teacher pointed out in his defence that he could not attend staff meetings and parent-teacher interviews because he was participating in extra-curricular activities. The Arbitration Board held that the reasons did not constitute cause and ordered that the teacher be reinstated.

New Brunswick

Five termination cases were received from New Brunswick. Reason for termination of contract in four out of the five cases was for incompetence. In the fifth case reasons for termination were not given by the school board.

In four cases the reason for termination was incompetency. In each case, the adjudicator held that termination was not in compliance with the collective agreement. Collective agreements require that the termination be preceded by a review, with the teacher by his superiors, of evaluation reports which substantiate incompetency and are contained in the teacher's file. One case has been appealed by the school board to the Court of Appeal on the basis that the adjudicator came to the wrong conclusion in that he tried to substitute his view of incompetency for that of the school board. Another case was appealed by the school board to the Supreme Court of New Brunswick. The adjudicator had ordered that the teacher be reinstated in his former position. Apparently, the teacher felt that he had not been properly reinstated in accordance with the award and filed a complaint with the Public Service Labour Relations Board. The Public Service Labour Relations Board ordered the school board to reinstate the teacher in his former position. The school board refused to comply and filed an appeal to the Supreme Court of New Brunswick. The Supreme Court dismissed the appeal by the school board.

In the fifth case the school board did not provide reasons for termination of contract. The adjudicator held that the school board did not comply with provisions in the collective agreement which requires that reasons be given. The case was successful and the teacher reinstated.

Newfoundland

Newfoundland's first collective agreement containing provisions for termination of teacher contracts came into effect on April 1,1973. Since that time there have been seven cases of contract termination that have been subject to arbitration procedures. However, only two out of the seven cases involved tenured teachers.

In one case, the teacher's contract was terminated because of the way he administered corporal punishment. The decision of the school board was overturned by the Arbitration Board and the teacher was reinstated.

In the second case, the teacher's contract was terminated for gross misconduct. The Arbitration Board decision in this case has now been appealed to the courts and a decision has not been rendered.

Northwest Territories

The Northwest Territories has not had any dismissal cases appealed to the Board of Reference since the new Ordinance and Regulations were enacted.

Nova Scotia

Termination cases were not available from Nova Scotia. However, two cases that were appealed to the Nova Scotia Supreme Court were located in law reports.

Beckwith and Allen v. Colchester-East Hants Amalgamated School Board, [1977] 23 N.S.R. (2d) 268 (N.S.S.C.). This was an appeal to the Nova Scotia Supreme Court in the nature of certiorari to quash a decision of the Board of Appeal. The Board of Appeal confirmed the decision of the school board terminating the two teachers who were convicted of possession of marijuana. Appeal to the Supreme Court alleged that the Board of Appeal failed to determine whether or not the school board had just cause and if it did whether termination was the appropriate remedy.

The Supreme Court indicated that it had to determine whether the Board of Appeal acted within its jurisdiction in reaching its conclusion. The Supreme Court held that the Board of Appeal exercised its authority and the applicants had not shown reason to grant an order in the nature of certiorari quashing the decision made by the Board of Appeal. The application was dismissed.

Melanson et al v. Board of School Commissioners of Halifax, (1974) 23 N.S.R. (2d) 74 (N.S.C.A.). This case arose as a result of termination of contract of seven vocational teachers. The Education Act (S.N.S. 1972), section 76(5) provides that a permanent teaching contract could be terminated on or before April 30, for just cause or insufficient pupil enrolment. Section 76(6) provides that a teacher must be given a written notice of the complaint against him and an opportunity to be heard before his contract is terminated. Six of the applicants were given notice by April 30. One was given notice for cause on April 28 with information about the complaints but was given no opportunity to be heard until one month later. The applicants appealed to the Board of Appeal on the ground that the terminations were invalid because no opportunity to be heard was provided. The Board of Appeal ruled that the correct procedure was followed and dismissed the appeals.

The applicants applied for an order of certiorari to the Nova Scotia Supreme Court, Trial Division, to quash the decision of the Board of Appeal. The Trial Division dismissed the application.

The applicants appealed to the Nova Scotia Supreme Court, Appeal Division. The Court of Appeal held that the notice of termination to the one teacher was invalid, because a notice of hearing was not given before the notice of termination. The Court of Appeal also held that the other notices of termination were valid because Section 76(6) was inapplicable where termination resulted from lack of enrolment.

Ontario

In Ontario, the Board of Reference case reports have not normally been in the public domain. In some cases, the hearings were held in-camera and the only recipients of the report were the teacher and the school board.

There has been a very recent move to make cases available beginning in 1972 until the present. In all instances, the names of the parties and other identifying features will be deleted. The procedure to make the reports available has yet to be determined and it will be some months until any reports are made available. As a consequence, Board of Reference decisions are not presently available from Ontario.

The only cases available from Ontario, at the time of writing, are those that have been appealed to a higher court and reported in a law report. The only case that has been located that took place in the time frame of this study was Essex versus Porter.

Essex County Roman Catholic Separate School Board v. Susan Porter and Patricia Podgorski, (1977) 78 D.L.R. (3d) 418 (Ont. S.C.). Susan Porter and Patricia Podgorski were terminated because they had entered into civil marriages. A Board of Reference was granted at their request. After hearing the case, the Board of Reference directed continuance of their contracts.

The school board appealed the decision of the Board of Reference to the Supreme Court of Ontario. Grounds for the appeal was that the Board of Reference was without jurisdiction as the dismissals were for denominational reasons.

In a majority decision by the Supreme Court of Ontario, it was held that the school board did not have to comply with the binding award of the Board of Reference. In judgment Mr. Justice J. Weatherston stated that:

> This, I think, is an infringement on a right preserved by S. 93, and it must therefore be held that it is ultra vires the Legislature to empower a Board of Reference to direct the continuance of a teacher's contract in cases when the teacher has been dismissed for reasons which have a denominational validity and value to justify termination of his employment, even though not of sufficient cause in law. The direction of the Board of Reference is therefore set aside, ...

This case has now been appealed to the Supreme Court of Canada.

Prince Edward Island

Prince Edward Island has only had one appeal to the Board of Reference since 1971 when legislation was amended. A teacher had her contract terminated because of a lack of discipline in her classes which resulted in students failing to achieve their full capacity and disturbed other classes. It was also alleged that she failed to carry her share of the load and was frequently absent from classes during the day.

Evidence was led during the hearing that the teacher had not been informed that she was not performing up to expectations. Evaluations indicated that she had been doing well.

The Board of Reference found that the teacher had not been fairly treated and ordered that she be reinstated with no loss of benefits.

Quebec

Quebec Board of Arbitration decisions are published in Recueil des Sentences de l'Education. Unfortunately, the cases are published only in the French language. The most recent edition covers the period from July 1976 to March 1977 and contains one hundred cases printed on 475 pages. During the time period covered by this study it would seem fair to estimate that Quebec had in excess of one thousand cases that were appealed to the Board of Arbitration.

Due to the cost of translating cases from French to English, only a limited number of Quebec cases are reported. Knowing the nature of this study the Provincial Association of Protestant Teachers of Quebec suggested that the following cases were of particular interest.

In two cases the reason for termination was neglect of duty, both cases were dismissed on appeal. In the first case the neglect of duty was further described as a lack of discipline and inadequate teaching insofar as he did not follow the curriculum or the program he prepared himself. The teacher apparently agreed with his shortcomings yet refused to change his teaching.

The Board of Arbitration indicated that it would be desirable to precede a dismissal with a progression of warnings and reprimands. Nevertheless, if circumstances justify dismissal, the school board can dismiss a teacher without preliminary measures. Appeal was dismissed.

In the second case involving neglect of duty the teacher had been absent from school a great deal. Much of the absenteeism was because of ill health. The Board of Arbitration ruled that the state of the teacher's health caused the children to suffer from a lack of education. The appeal was dismissed.

In a third case the teacher was dismissed because she had a negative attitude toward the authority of the school and her lack of cooperation and lack of contribution to the school program. Apparently, the teacher had sent a letter to the school board informing them that she would not perform any supervisory duties.

Following the notice of dismissal, the teacher divulged examination questions to the students by leaving an examination paper for everyone to see. Following this incident the teacher was suspended.

The Board of Arbitration indicated that the dismissal was justified even though the notice of dismissal was not preceded by written reprimands. The appeal was dismissed.

In a fourth case the teacher was dismissed because he was convicted of circulating counterfeit fifty dollar bills. In defence, the teacher claimed that since the incident occurred during the summer vacation it should not be cause for dismissal.

The Board of Arbitration held that the conviction of a criminal offence justified dismissal.

The fifth case involved alleged immorality. The teacher was accused of opening his bathing suit while instructing a course at the swimming pool.

The Board of Arbitration observed that the school board's proof of the incident was only the testimony of three young girls. The testimonies contained uncertainties, impressions and contraditions on important points.

The Board of Arbitration concluded that the girls may have been mistaken by the motion of the bathing suit. The appeal was allowed.

Saskatchewan

In Saskatchewan, from 1970 until the present, thirty-three tenured teachers appealed the termination of their contract to a Conciliation Board or a Board of Reference. Nineteen cases were appealed to a Conciliation Board and fourteen cases were appealed to a Board of Reference.

Saskatchewan cases cannot be dealt with individually because anonymity was requested. Cases that were appealed to a higher court and reported in a law report will be reported in more detail as anonymity is not required.

Conciliation Board cases. In six of the nineteen cases appealed to a Conciliation Board the termination was deemed to be justified. Reasons for termination in the six cases were:

1. unsatisfactory service and lack of cooperation with the administration;
2. conflict with the administration and staff;
3. general incompetence and unsatisfactory discipline;
4. refusal to implement programs;
5. inability to perform satisfactorily; and
6. neglect of duty and general unsuitability for teaching position.

In an additional six cases re-engagement or re-engagement after a leave of absence was recommended. Reasons for termination in each of these cases were as follows:

1. lack of cooperation;
2. parental complaints about discipline and teaching;
3. lack of cooperation and unacceptable attitude toward the administration;
4. student discipline too severe and staff relationships;
5. unacceptable for positions available; and
6. loss of confidence by parents in teaching ability.

An indefinite leave of absence was recommended in another three cases. Reasons stated for termination in these cases were:

1. local dissatisfaction expressed by ratepayers in a petition;
2. inability to perform duties required of a teacher for health reasons; and
3. difficulties in presenting material to students due to a lack of professional development and not keeping up with current developments at the University level pertaining to area of teaching.

In the remaining four cases, one teacher was granted a sabbatical leave of six months. The reason for termination had been stated as unsatisfactory service. In another case, the termination was rescinded and the teacher resigned after qualifying for superannuation. Reason for termination had been stated as inability to perform teaching duties because of health problems. In a third case, the Conciliation Board did not make a recommendation but ruled that the reason for termination was incorrect. Reason for termination was that the teacher qualified for a full pension under the superannuation act. A fourth case, although appealed to the Conciliation Board, was never heard by the Board as an application for certiorari was made to a higher court.

In Prefontaine v. The Board of Regina (East) School Unit No. 20, [1977] 6 W.W.R. 32 (Sask. Q.B.) Mr. Prefontaine's contract was terminated under The Teacher Tenure Act for his lack of cooperation and unacceptable attitude toward the school administration and board. Mr. Prefontaine was given a hearing by the school board to give reasons for not terminating his contract. On appeal to a conciliation board the board made the following recommendations:

> The Regina (East) School Unit board reinstate Mr. Armand J.E. Prefontaine on the condition that:
> 1. He accept a transfer to another school in the Unit, or
> 2. He accept a one year leave of absence at the end of which his assignment would be determined by the Unit board. Further, the conciliation board recommends that the decision with regard to the alternative selected be made in consultation with Mr. Prefontaine.

A meeting was held to discuss the conciliation board recommendations. At the meeting Mr. Prefontaine "was asked if he was prepared to accept the recommendations of the conciliation board, but declined." The board then passed the following resolution:

> That Mr. Armand Prefontaine be reinstated on the staff of the Unit conditional upon him taking a leave of absence without pay until the commencement of the 1977-78 academic year at which time he will be placed in a Unit school other than the Montmartre School.

It should also be noted that the school board had not agreed to be bound by the conciliation board's decision, but did accept one of the recommendations made by the board.

Mr. Prefontaine commenced an action against the school board for wrongful dismissal. On a preliminary point of law, that is reported in Chapter V of this study, it was decided that Mr. Prefontaine had not exhausted all remedies open to him.

The action for wrongful dismissal was heard by Mr. Justice Maher. In judgment, the court held that the school board fulfilled all statutory requirements, acted judicially and conformed to the rules of natural justice. Mr. Prefontaine's action was, therefore, dismissed.

Board of Reference cases. Ten of the fourteen cases appealed to the Board of Reference occured in 1970. The reason for termination in each of the ten cases was the elimination of the teacher's position. Details of the litigation of one case Placsko v. Humboldt School Unit, [1972] 1 W.W.R. 512 (Sask. C.A.) provides the legal background for each of the other nine cases.

Mrs. Placsko was terminated under The School Act effective June 30, 1970, because her position was being discontinued. Her case was appealed to the Board of Reference and the Board ordered that Mrs. Placsko be reinstated. The school board appealed the decision of the Board of Reference to the Court of Queen's Bench. Mr. Justice MacPherson ruled that the contract of a tenured teacher could not be terminated effective June 30 under The School Act. The award of Mr. Justice MacPherson was appealed by the school board. The judgment of the Court of Appeal upheld the award of Mr. Justice MacPherson. In addition, the Court of Appeal awarded full salary to Mrs. Placsko for the period of time (seven months) that she had not been paid.

As a result of the Placsko case, all ten teachers were reinstated by the courts with full salary entitlement less any earned salary from employment during the period in question.

The Humboldt School Unit was not to be defeated. Mrs. Placsko's contract was terminated a second time. This time it was terminated under The School Act effective February 28, 1971. The reason for termination was, basically the same as stated in the first termination, the elimination of her teaching position. Although the case was not heard by a Board of Reference, it was heard before a judge. Mr. Justice Tucker ruled in favour of the school board. In making the judgment, Mr. Justice Tucker noted that the reason for termination did in fact exist and that the school board did comply with all legal requirements in terminating Mrs. Placsko's contract of employment.

In each of the other four cases appealed to the Board of Reference the teachers were ordered reinstated. Reasons for termination in each case were as follows:

1. deterioration of relationships;
2. unsatisfactory service in present position;
3. methods of classroom discipline; and
4. redundancy.

Yukon

The Yukon has not had any teacher appeals to termination of contract. There have been cases that were pursued by the Yukon Teachers' Association on the grounds of improper formal evaluation reports as required by the School Ordinance. However, there have not been any cases appealed to the adjudicator.

Discussion

A great deal of litigation has arisen as a result of termination judgments by school boards across Canada. The litigation involves a number of different reasons for termination of teacher contracts. When reasons are enumerated in statute, then reasons given in the notice of termination must conform to statutory reasons. In some instances, statutory reasons are elaborated upon in the notice of termination. When reasons are not enumerated in statute, reasons given in a notice of termination tend to vary a great deal, yet they can be categorized. Statutory reasons for termination and a summary of reasons found in cases are contained in Table 3 (page 68).

Four provinces, Alberta, Manitoba, New Brunswick and Ontario, do not specify reasons for termination in statute. Statutory reasons for the other provinces and territories vary from one statute to another. A number of statutory reasons are ambiguous; for example, the term "cause" or "just cause" is often stated as a statutory reason and is used when a teacher's conduct does not fall within a specified termination area. Because the phrase is open ended, it could be cited as the only reason for terminating a teacher's contract, however, general practice is to specify cause for termination.

Table 3

Statutory Reasons for Termination and Summary of Reasons Stated in Cases

Province or Territory	Statutory Reasons	Incompetence	Neglect of Duty	Misconduct	Criminal Conviction	Elimination of Position	Insubordination
Alberta		X	X	X		X	X
British Columbia	Misconduct, neglect of duty, refusal to obey, criminal conviction	Learning or performance less than satisfactory	X	X	X		X
Manitoba		X	X	X		X	X
New Brunswick		X					
Newfoundland	Gross misconduct, insubordination, neglect of duty, incompetence	X		X			
Northwest Territories	Cause, Incompetence		NO CASES				
Nova Scotia	Just cause, declining enrolment				X	X	
Ontario				X (only case)			

Table 3 (Continued)

Territory or Province	Statutory Reasons	Incompetence	Neglect of Duty	Misconduct	Criminal Conviction	Elimination of Position	Insub-ordination
Prince Edward Island	Cause or unsatisfactory service		X (only case)				
Quebec	Insubordination, misconduct, immorality, incompetence, neglect of duty		(Limited number of cases translated) X	X	X		X
Saskatchewan	Incompetence, neglect of duty, unprofessional conduct, immorality, disability	X	X			X	X
Yukon	Misconduct, neglect of duty, refusal to obey, unsatisfactory service		NO CASES				

The terms "unprofessional conduct," "misconduct" and "immorality" are sometimes used interchangeably and are equally ambiguous. The aspects of all three terms are complex and numerous. "Unprofessional conduct" is used in only one statute. Determination as to the constitution of unprofessional conduct is generally left to the professional organization and other reasons are usually used for termination of teachers' contracts. Composition of "misconduct" and "immorality" varies from one place to another. What may be considered "misconduct" or "immoral" in one area may be condoned in another. "Gross misconduct" is a matter of degree with the difference between misconduct and gross misconduct depending upon the judge.

The terms "incompetence" and "unsatisfactory service" are also quite vague when they stand alone. These reasons, similar to the ones mentioned above, can be construed as including almost anything.

Insubordination, neglect of duty, disability and refusal or neglect to obey a lawful order of the board are reasons frequently employed when describing the manner in which teachers discharge their responsibilities. These four terms reflect various aspects of a common problem. "Insubordination" is the failure of a teacher to abide by reasonable requests made by the administration of the school or school board. The term "neglect of duty" is failure to carry out duties both written and implied, in a competent manner. The term "disability" could mean either mental or physical inability to carry out duties required of a teacher. "Refusal or neglect to obey a lawful order of the board" is generally the result of a specific order of the board directed toward an individual teacher as a means of ordering the teacher to do something specific or to cease a course of action.

Termination, as a result of "criminal conviction," is generally predicated on a notice of conviction. The school board must decide if the conviction resulted form a serious offence that would harm his position as a teacher.

In a number of cases, school boards may have used the reason of "redundancy" or "elimination of position" as a means of removing an undesirable teacher. However, there have been other cases where a declining enrolment has necessitated a reduction in courses or grades offered in a school and the termination of one or more positions was necessary.

The reasons for termination of teacher contracts are numerous and often obscure. The numerous reasons can be grouped and reduced to a few categories. The categories for the purpose of this study have been classified as:

1. misconduct;
2. incompetence;
3. neglect of duty;
4. criminal conviction;
5. elimination of position; and
6. insubordination.

CHAPTER V

CASES AND PROCEDURES

Introduction

Canadian teachers' jobs are affected by a vast number of legislative enactments and regulations. In addition, a great deal of the law is determined by decisions of tribunals and courts. Case law is a result of disputes in interpreting sometimes ambiguous language contained in statutory enactments or in the meaning and/or applicability of doctrines or rules. Court decisions form our system of common law and act as precedent for future cases.

In this chapter the relationship between cases and procedures is examined. The concepts of precedent, stare decisis, judicial review and tenure are developed to exemplify the effect of cases upon procedures and vice versa.

Precedent and Stare Decisis

According to the doctrine of stare decisis, judges in a common law system have to follow precedent cases decided in a higher court. After a case is heard and a decision reached, that decision becomes a precedent for judges in lower courts in dealing with similar fact situations. However, no two cases are ever the same as they can be distinguished as to the facts of the case. The problem becomes one of locating relevant cases that lie very close to the situation and attempting to show that the finding of the earlier case should be followed.

The strength of a case proposed as precedent depends to a large extent upon the court in which is was tried. Cases tried in the Supreme Court of Canada, for example, provide binding precedent for all other courts in the country. A finding of a provincial court of appeal would be persuasive on other provincial common law courts of appeal and binding on all other lower courts within the province.

In a civil law system, such as Quebec, the civil code and not cases are most important. Judges in a civil code system are not bound by precedents and may differ in their interpretation of the civil code. However, in practice, according to Gall (1977:40) "judges do, in fact, follow previously decided cases because of the necessity to provide an element of predictability in the law."

Figure 2 relates the doctrine of stare decisis to teacher appeal tribunals. The degree of persuasiveness is somewhat speculative and could vary according to the matching of similar fact situations. Appeal tribunals are bound by teacher termination decisions made by a higher court within the province or territory. Decisions by appeal tribunals, provincial courts or district courts in other common law provinces and territories would be persuasive on the Alberta Board of Reference. Although it is not illustrated in Figure 2, past decisions of an appeal tribunal would be highly persuasive on subsequent appeal tribunals.

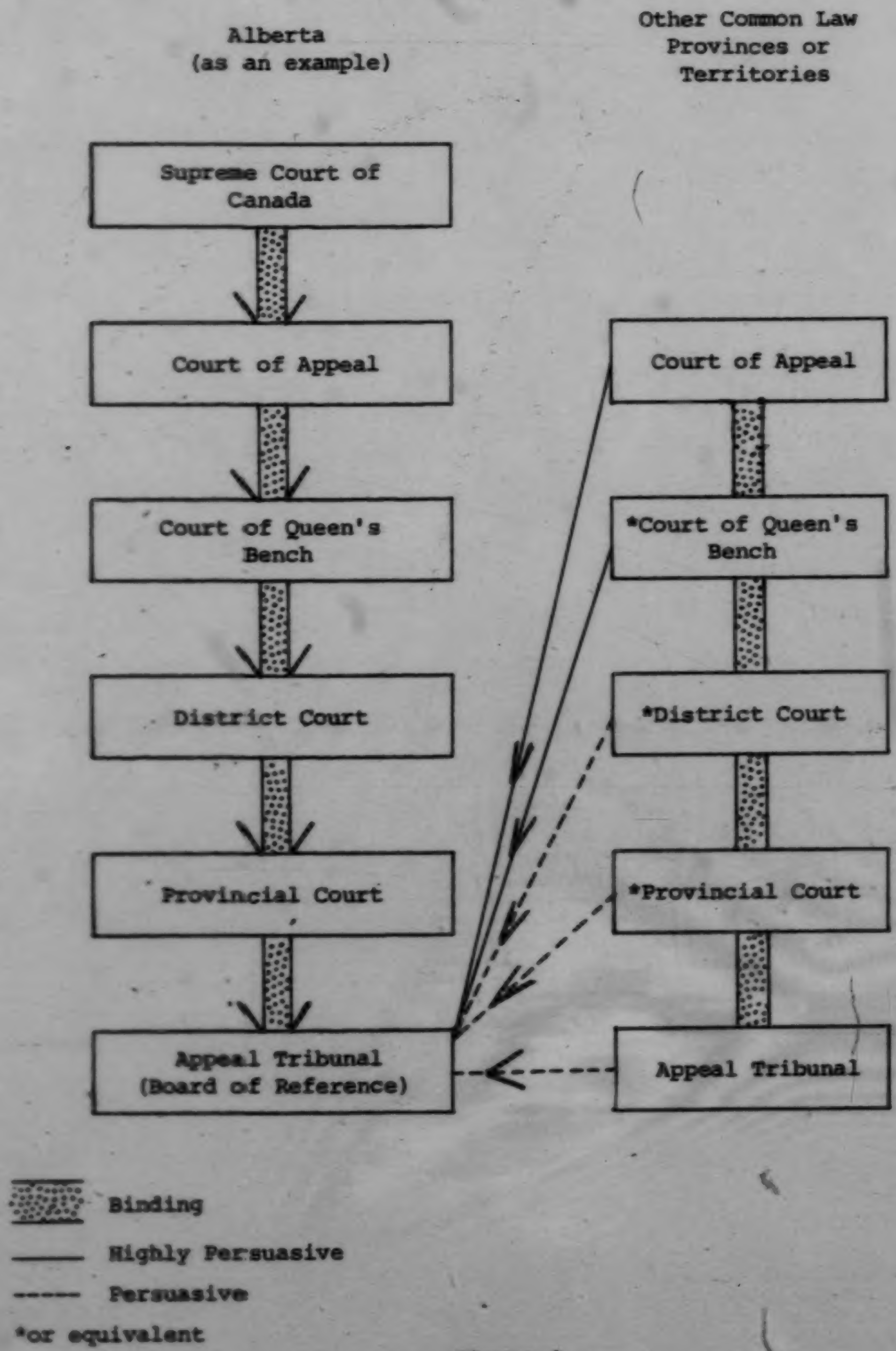

Figure 2

Hierarchy of Courts

Means of Challenging Termination Decisions

In all Canadian provinces and territories the decision to terminate a teacher's contract is made by a school board, a committee of the school board or someone acting in place of a school board. A major question that comes up in termination cases is whether the school board, when deciding to terminate a teacher's contract, is acting as an administrative, judicial or quasi-judicial body. If the school board is acting as a judicial or quasi-judicial body, then it is compelled to abide by the rules of natural justice; whereas, if the school board acts as an administrative body, then it does not have to adhere to the rules of natural justice. A number of cases referred to later in this section may assist in determining an answer. In any case, the school board's decision to terminate may be reviewed by a tribunal (usually called a Board of Reference) provided the teacher appeals the termination. If a breach of the rules of natural justice is brought before the tribunal, then it will have to decide whether the school board's action was administrative, judicial or quasi-judicial in nature. One means of challenging the school board's decision to terminate is an appeal to a tribunal on the basis of a denial of the rules of natural justice. Other bases for appeal may include:

1. the merits of the case;
2. non-compliance with statutory provisions;
3. inadequate notice; or
4. other reasons peculiar to the case.

Once the appeal tribunal has heard the case and rendered a decision is there any recourse from that decision?

Statutes establishing four out of twelve tribunals (see Table 2(b), page 43) do allow an appeal to the tribunal's decision. In such cases the appeal is directed to the court specified in the statute or to the next highest court.

Statutes establishing ten out of twelve tribunals (see Table 2(b), page 43) state that there is no appeal to tribunal decisions. Even when the statute does prohibit an appeal, it is sometimes possible to challenge the decision by way of judicial review.

Courts will intervene if tribunals lack or exceed jurisdiction. Courts establish criteria for determining breaches of procedural requirements. Failure to comply with a statutory duty to give prior notice, or hold a hearing or make due inquiry or consider objectives in the course of exercising discretionary powers affecting individuals rights will always be reviewed by the courts.

The courts will, by way of certiorari, review decisions of tribunals where there is evidence of a breach of the rules of natural justice. Generally speaking, it is expected that decisions made by judicial or quasi-judicial tribunals should be made in a fair and reasonable manner. As mentioned in Chapter II, the two requirements of natural justice are that a fair hearing be held and there must be no bias in deciding the case. The principles of natural justice are concerned with procedural matters, not with matters of fact.

If it can be shown that the tribunal abused its power or rendered its decision in bad faith, there are grounds for judicial review by way of an application for an injunction which may be brought by a notice of motion or application for declaration which is commenced by a statement of claim.

In the event that there is evidence to indicate that there was an error of law on the face of the record, it is a ground for judicial review. This ground determines whether the tribunal made a mistake about how the law or the evidence should be used, and whether that mistake was obvious. A court can examine the record of the hearing to see what evidence the decision was based upon. If the court finds from the record that there was no obvious evidence to reasonably support the decision, then it will find that decision was incorrect in that there was an error of law on the face of the record. In such a case, the court may grant a writ of certiorari and quash the tribunal's decision.

If a public official, whether serving on a tribunal or otherwise, is not performing or refuses to perform a statutory duty, a writ of mandamus may be made to compel that person to perform a required duty.

Judicial review of decisions is a means of control over tribunals. Even when an enabling statute establishing the tribunal contains a privitive clause prohibiting review of decisions made by the tribunal, courts of superior jurisdiction will be receptive to the process of judicial review. Courts not only play a great part in reconciling parties to a dispute but also perform a supervisory role to see that quasi-judicial tribunals observe certain minimal procedural standards and stay within their jurisdictional boundaries.

Technical cases. Prefontaine, a Saskatchewan case referred to earlier, serves as an example of a challenge to a decision with regard to termination of a teacher's contract. Mr. Prefontaine's contract was terminated under The Teacher Tenure Act. The school board gave reasons for the termination, held a hearing for the teacher but did not agree to be bound by the decision of the Conciliation Board. Following the hearing by the Conciliation Board, the teacher commenced an action against the school board for wrongful dismissal. On a preliminary point of law, the question was whether the plaintiff's right to the action was taken away by The Teacher Tenure Act. In giving reasons for judgment, Mr. Justice MacLeod noted that The Act provides a procedure designed to resolve disputes but did not provide for a remedy except by mutual agreement. In answering the point of law, Mr. Justice MacLeod ruled that "the plaintiff, in pursuing his remedy under The Teacher Tenure Act, where the school board does not agree to be bound by the conciliation provided in The Act, does not thereby exhaust all remedies open to him at law."

In another Saskatchewan case, Regina v. Board of Trustees of Estevan Collegiate Institute, Ex parte Dirks, (1970) 16 D.L.R. (3d) 570 (Sask. C.A.), Mr. Justice Collinton, speaking on behalf of the court, suggested that the school board's power is administrative rather than judicial and that certiorari does not lie to review the decision. The court went on to say that the school board's failure to comply with statutes respecting the form of notice and reasons may render the board's decision illegal and if so, the remedy is an action for wrongful dismissal.

However, courts often do not agree with one another. When the Prefontaine case was appealed to the Court of Queen's Bench for Saskatchewan, Mr. Justice Maher in judgment, suggested that the school board "acted judicially in arriving at its decision."

In an Alberta case, Elliott v. The Board of Trustees of the St.

Albert Protestant School Board, unreported, 1972, the Board of Reference did not uphold the decision of the school board to terminate Mrs. Elliott's contract because there had been a breach of the rules of natural justice. However, the school board made an application by way of certiorari to quash the Board of Reference decision. Mr. Justice Lieberman, of the Supreme Court of Alberta, found that the school board exercised a quasi-judicial function and that the rules of natural justice must be observed. Accordingly, the application was dismissed.

In another Alberta case, Penner v. The Board of Trustees of the Edmonton Public School District, [1974] 5 W.W.R. 762 (Alta. S.C.), Mr. Penner requested that the school board hold a public hearing with respect to his intended termination. The school board refused. Penner applied for an order in the way of mandamus to force the school board to hold a public hearing. Mr. Justice Cavanagh of the Trial Division of Edmonton District Court heard the application. In judgment, Mr. Justice Cavanagh (1974:2-3) said:

> I would emphasize that the relationship between the parties is one of master and servant. The contract of service between them would be terminable by either party under the common law. Section 78 of The School Act places certain restrictions on the Board as master. It may still terminate the contract of service but the section requires that it give 30 days written notice of its intention to do so. It must also specify the reasons for termination. Finally, it must act reasonably.
>
> The letter of November 30th is not a notice of termination under Section 78. It is a notice of a proposed hearing to determine whether a notice of termination should be given . . . . The Board has said, "Here is the evidence we now have which indicates we should give a termination notice. We propose to hear more and ask you to come and hear it too and then we will hear your reply."
>
> I construe the stated intention of the Board to be an attempt to act reasonably as required by the statute. I believe the board is going much further than it needs to in holding a hearing . . . . This is not a board sitting as a tribunal to decide between two parties. This is a master trying to decide whether to dismiss a servant.

The judgment of Mr. Justice Cavanagh appears to be a return to the concept of the law of master and servant and that a school board in deciding a teacher's contract is not acting as a tribunal. However, Cavanagh concluded that there were no facts in support of making the hearing public thus, the application for mandamus was dismissed.

Procedural cases. In some cases alleged improper procedure is the central issue. If there is a procedural dispute then, the merits of the case are seldom argued, which is especially true when the procedural objections are upheld. The following cases serve as examples of procedural objections in teacher termination cases.

A Quebec case, Belanger v. Les Commissaires D'Ecoles Pour la Municipalite Scolaire De St. Gervais, Comte De Bellechasse, [1970] 16 D.L.R. (3d) 602 (S.C.), the Supreme Court of Canada held that a tenured teacher may request reasons for termination. If that teacher was not satisfied with reasons stated for termination he could submit his complaint to arbitration. Where the arbitration board finds that the termination was null and void and where the school board refuses to re-engage the teacher, the teacher is entitled to succeed in an action for payment of a year's salary.

In another Quebec case, Syndicat Des Enseignants De L'Estrie (Hubert Guedj) c. Commission Scolaire Regionale De L'Estrie, unreported, 1976, Mr. Guedj claimed that proper procedures were not followed because the school board delegated authority to an executive committee to terminate his contract. The Arbitration Board held that the law did not prohibit the delegation of any power or authority and dismissed the appeal.

A similar case, Penner v. The Board of Trustees of the Edmonton

Public School District, unreported, 1973, occurred in Alberta. Penner had been granted a hearing by the superintendent of schools but not by the conference committee of the school board, which was charged with confirming the termination. The Board of Reference held that the procedure of delegating power of termination to the superintendent subject to confirmation by the conference committee of the board, failed to observe the rules of natural justice and Penner was reinstated. The authority of the school board to delegate some of its power to a committee was not questioned.

In another Alberta case, Balachandra v. The School Committee of the County of Barrhead, unreported, 1977, proper notice prior to the school board hearing was the subject of proper procedure. Mr. Balachandra was given notice of intent to terminate his designation as principal and termindation of his contract of employment but was not invited to a hearing in front of the school board until an hour and a half prior to the scheduled meeting. Mr. Balachandra did not attend the hearing and objected to the inadequate notice. The Board of Reference held that the school board had violated the principles of natural justice in that the teacher had not been given an adequate opportunity to be heard. The appeal was allowed and Mr. Balachandra reinstated.

The British Columbia case of Johnston and Ferry v. The Board of School Trustees, School District 35, unreported, 1979, did not involve termination of contract but did involve procedural matters that are significant. Both people were "summoned" to attend a school board meeting to explain their involvement in problems in the school where they both taught. The teachers did not attend the meeting as requested and were subsequently suspended without salary for disobeying a lawful order of the board. The teachers were invited to attend another school board meeting for an interview with regard to suspension and provided for in statute. These teachers, accompanied by a lawyer, attended the meeting but refused to answer questions or give information. Consequently, the teachers were further suspended.

The teachers, with the backing of the British Columbia Teachers' Federation, applied for judicial review of the situation under The Judicial Review Procedure Act. Mr. Justice Fulton, in his reasons for judgment, held that the orders "summoning" teachers to the meetings were unlawful as being beyond the powers of a school board as outlined in The Public Schools Act. Justice Fulton further stated that the orders were a denial of natural justice.

While addressing the question of school board power to require attendance of the teachers to a meeting, Mr. Justice Fulton held that the express power in The Public Schools Act occurs only after a teacher has been suspended. In any case, according to that Act, it is the teacher not the board who decides whether there will be an interview. Mr. Justice Fulton went on to say that ". . . the Board's function is to supervise generally the educational process within its jurisdiction. Its function is not to run the schools and discipline teachers on a day to day basis." The court concluded that since the school board was without power to summon the teachers, there was no lawful order that could be disobeyed and that the suspensions were unlawful.

Turning to the question of a denial of natural justice, Mr. Justice Fulton, at page 12 of the judgment, said that:

> As to denial of natural justice, I take it to be common ground that a school board, although it has many administrative functions, is, in deciding whether a teacher should be suspended or dismissed, not acting as a purely administrative tribunal but

> is exercising a judicial or quasi-judicial function and is bound to act in a judicial manner, which includes acting in accordance with the principles of natural justice.
>
> In my opinion the Board was so bound, but did not so act.

Mr. Justice Fulton commented further on a denial of natural justice and noted that the failure and refusal of the school board to give any particulars of the problem or of the teachers involvement constituted a "total denial of natural justice." He further noted that under such circumstances, it was contrary to natural justice to demand that the teachers answer any questions or give any evidence when the particulars had been refused.

The court held that the suspensions be set aside and that lost salary be paid.

Unusual cases. Although the following case occurred prior to 1970, it is significant in that it was the first reported teacher termination case in Alberta. In fact, the termination took place before Alberta became a province and was heard after Alberta joined confederation. In the case of Clipsham v. Grande Prairie School District, [1907] 6 W.L.R. 95 (N.W.T.C.A.), Mr. Clipsham was terminated on January 3, 1905 for alleged immoral conduct. Apparently the allegation of immoral conduct was not proven and the alleged immorality was not described in the report. The teacher claimed that since he was under contract for the full year at a salary of $600, he was entitled to salary for the remainder of the year. Following an appeal to the Commissioner for the North-West Territories and two appeals to the courts, Mr. Clipsham was finally awarded $75.15 by the Full Court of the North-West Provinces in Regina on April 30, 1907.

Ashlie v. Chester-Upland School Board, unreported, 1979, also involved immoral conduct. This case, although it happened in the United States, is the only American case referred to in this study and serves as an example of another unusual case in that the reason for termination is unique and is an example of a landmark case that could affect future cases. This case also involves a denial of natural justice. Ms. Ashlie, who had undergone a sex change while teaching in Pulaski Middle School in Media, Pa., was terminated on the grounds of immorality. Three weeks following the sex change Ms. Ashlie was fired. Ms. Ashlie appealed the termination and it was heard by Mr. Justice Van Artsdalem of the United States District Court. The court did not deal with the matter of alleged immoral conduct but rather found that Ms. Ashlie had not been granted a hearing before the school board terminated her contract. Ms. Ashlie was awarded full back pay and reinstated.

Another unusual case involving an appeal of a resignation by a school board is Watson v. Northern School Board, [1976] 5 W.W.R. 45 (Sask. Q.B.). On January 12, Mr. and Mrs. Watson wrote the school board retroactively resigning from their contracts of employment effective the end of the Christmas holiday. Mr. and Mrs. Watson were under contract to continue their teaching duties following the Christmas vacation but never did so. The school board appealed the resignation to the Board of Reference, who ordered the Watsons to each make a payment of $250 to the Northern School Board as reimbursement for expenses incurred by the school board in advertising positions they vacated and the cost of transporting replacement teachers. The Watsons made an application by way of certiorari to the Court of Queen's Bench to quash the decision by the

Board of Reference. The Court of Queen's Bench dismissed the application.

Even though a study by Swan on The Board of Reference in Alberta occurred prior to 1970 it is cited in this study as he referred to some usual reasons for terminating teachers' contracts. Swan (1961:108) identified the following reasons for terminating teachers' contracts in Alberta.

Ground Alleged by School Board	No. of Cases
--lack of cooperation with other teachers	2
--difficulties in money matters	2
--participation in school board elections	2
--ill health	1
--lack of cooperation with school board	1
--engagement in other occupation (farming)	1
--unsuitability for grade level	1
--use of sarcasm	1
--attitude towards Christmas concert	1
--racial discrimination	1
--unauthorized use of religious pamphlets	1
--desire of school board to establish retirement age for female teachers	1
--desire of school board to replace male by female teacher	1
--desire of school board to replace female by male principal	1
--desire of school board to replace non-bilingual by bilingual teacher	1

It was also noted by Swan (1961:106-108) that the above reasons were not specified in statute and that teachers won all but three of the eighteen listed above. Of the three cases lost, one was related to unsuitability for grade level, one to participation in school board elections and one to engagement in farming.

Tenure

To have "tenure" means that boards, when terminating a teacher's permanent or continuous contract, must follow statutory or agreed upon procedures (due process) and abide by the rules of natural justice.

Kerans (1972:4), while speaking about tenure, said that:

> I understand tenure as some form or another of job security. As perfect job security or absolute tenure is unknown, I believe it would be more correct to talk, not about tenure, but how much tenure.

The presence of reasons for termination in statute does not necessarily guarantee tenure. As pointed out earlier in this study, many reasons are ambiguous and some are meaningless. The important aspect is that reasons are required. If reasons for termination are required (and they are according to the rules of natural justice), then they will have to withstand the test of an appeal tribunal.

Tenure is not measured by calculating the number of cases that are "won" or "lost" by teachers, that is immaterial. Whether a teacher "won" or "lost" is often difficult to determine. Quite often a sum of money was awarded to the teacher as damages but the teacher lost his job. Did the teacher "win" or "lose"? It is important to follow statutory procedures, to make sure statutory provisions are just and to follow the rules of natural justice.

Teacher tenure, whose basic purpose is to protect teachers who have successfully completed their probationary period from unjust termination for unfounded reasons, is established in statute.

The probationary period for obtaining tenure in Canada varies from one province or territory to another. In British Columbia, teachers are initially given a continuous contract which may be converted to a probationary contract during the first nine months. Quebec teachers serve on a one-year contract, the termination of which is appealable. Other provinces range from a one-year probationary contract in Alberta to three-year probationary contracts in New Brunswick and Prince Edward Island (Table 2(b), page 43).

Procedures. Procedures governing conduct of appeal tribunals are similar across Canada, however, the isolation of some idiosyncrasies should prove beneficial.

In Alberta, a school board, when terminating a teacher's contract, is required to supply reasons for the termination and is restricted to the reasons given. The employer is also required to act reasonably. The duty of the Board of Reference is to determine whether the school board, in terminating the teacher's contract, acted reasonably. There is no provision for a summary termination in Alberta as there is in British Columbia.

Teachers in British Columbia do not have a right to any length of notice or salary in lieu of notice when dismissed for gross misconduct. Although there is no record of school boards utilizing the above provision, it is, nevertheless, contained in statute and could be used at any time. School boards in British Columbia are not required to pay a teacher his salary while under suspension as they are required to do in most other provinces and territories.

Manitoba teachers have to ask school boards for reasons, then the employer is compelled to supply reasons for termination. Manitobans may also be denied a hearing by the school board if the reason for termination is not related to incompetency or the teacher's character.

Ontario teachers are not given a hearing by the school board under any circumstances. They may also be refused a hearing by the Board of Reference if the Ministerial investigation determines that the reasons for termination are very convincing.

Saskatchewan teachers, under the old Teacher Tenure Act and The School Act (1965), were not much better off as the Minister could refuse to grant a Conciliation Board or a Board of Reference. However, there is no record of this happening.

In Quebec, a teacher is required to submit a physicians statement annually stating that he suffers from no infirmity or disease that renders him unfit to teach. A statement is also required to certify that the teacher is free from tubercular disease.

Statutes of the Yukon and Nova Scotia provide for a one-person adjudicator or board of appeal whereas most other jurisdictions, except Alberta, have a three-person tribunal. Currently, Alberta has a single judge act as the Board of Reference. However, in the recent past, a three-person board was the accepted practice. This board was usually comprised of a judge acting as chairman and two educators as members.

Natural justice. Natural justice was referred to earlier in this study and is mentioned again to assist in determing whether the rules of natural justice are applied to the termination of Canadian teachers' contracts. Rules of natural justice grant teachers certain rights when their contract is terminated. Among such rights are the right to:

1. reasons;
2. a fair hearing;

3. adequate notice; and
4. freedom from bias.

Provision for reasons and a hearing are not always provided for in statutes as noted in previous sections. For example, in Manitoba teachers are required to ask for reasons when a teacher's contract is terminated, when, according to the rules of natural justice, reasons should be given. Also, according to the rules of natural justice, hearings ought to take place, but this is not always done. Manitoba teachers may not be given a hearing by the school board unless the reason for termination is related to incompetence or the teacher's character. Some of the rules of natural justice are not granted to Ontario teachers. For example, they are not given a hearing by the school board and they may not even have access to the Board of Reference if the Minister decides that it is not warranted. New Brunswick teachers find themselves in a similar situation. If a New Brunswick teacher is terminated for incompetence and the supervisor has reviewed that teacher's file with him, that teacher does not have recourse to appeal. Under the previous procedures in The Teacher Tenure Act, the Minister of Education in Saskatchewan could also refuse a Conciliation Board or a Board of Reference.

Summary

The doctrines of precedent and stare decisis provide for consistency in the applicability of the law. School boards, when considering termination of teacher's contracts, may benefit by referring to decisions of previous cases that had similarities in fact.

A school board's decision to terminate a tenured teacher's contract may be appealed to a tribunal (usually called a Board of

Reference). Cases may be appealed on the basis of:

1. the merits of the case;
2. a denial of the rules of natural justice;
3. non-compliance with statutory provisions;
4. inadequate notice; or
5. other reasons peculiar to the case.

The tribunals decision may only be appealed if there is provision in some statute for an appeal. Only four out of twelve Canadian tribunals allow an appeal to their decision.

If an appeal to a tribunals decision is prohibited their decision may be challenged by way of judicial review. Grounds for judicial review would include:

1. failure to comply with statutory provisions;
2. failure to abide by the rules of natural justice;
3. an error at law on the face of the record;
4. abuse of power;
5. bad faith;
6. failure of a public official to perform a duty; or
7. other grounds peculiar to the case.

One question frequently addressed by tribunals and courts is whether the school board in terminating a teacher's contract acted as an administrative or judicial or quasi-judicial body. As a result of examining cases on this point, the majority opinion appears to be that school boards serve a judicial or quasi-judicial function when deciding to terminate a teacher's contract. School boards, when terminating teacher's contracts, are required to follow rules of natural justice.

Cases that are appealed on procedural grounds alter procedures used in subsequent cases if they are successful. If a case is unsuccessful then the procedure is likely to carry on as before. A case that was appealed on the grounds that the school board refused to carry out the tribunal's orders illustrates that there is no formal procedure to require a school board to implement the tribunal's decision. Other cases appealed on procedural grounds have resulted in decisions that

1. enable school boards to delegate authority to a committee to deal with terminating a teacher's contract;
2. require school boards to give teachers adequate notice for a hearing;
3. require school boards to abide by the rules of natural justice; and
4. prohibit school boards from "summoning" teachers to a school board meeting without providing reasons.

The first teacher termination case in Alberta occurred before Alberta became a province. The teacher was terminated for alleged immoral conduct. Following a lengthy appeal procedure the teacher was awarded less than one hundred dollars. In a 1979 case in the United States, a teacher who had undergone a sex change operation was also terminated for immorality. The case was won by the teacher on the basis of non-compliance with the rules of natural justice.

The purpose of tenure is to protect teachers, who have successfully completed a probationary period, from unjust termination by following the rules of natural justice and statutory procedures. Procedures in some provinces and territories mitigate against the principles of fairness, justness and natural justice.

CHAPTER VI

CASES AND REASONS

Introduction

Exact reasons for termination are sometimes difficult to determine. When statutes do not stipulate reasons, then any reason could be given. When multiple reasons are specified in a particular case, then one reason must be selected as the reason for termination for classification purposes. In this chapter, reasons stated in cases are grouped into six categories as a means of consolidation and facilitation.

The process utilized to determine the six categories consisted of listing all the statutory reasons for terminating teacher contracts (Table 4, page 93) and from that, similar reasons were grouped. "Incompetence" includes incapable, disability and unsatisfactory service or learning situations. "Insubordination" includes refusal to obey a lawful order of the board. "Neglect of duty" and "criminal conviction" stand alone. "Elimination of position" includes declining enrolment. "Misconduct" includes immorality and unprofessional conduct. The statutory reasons of "refusing a medical examination," "cause" and "other cause" were not stated as reasons in any cases cited.

Table 5 represents an analysis of the cases cited in Chapter IV. Each of the cases cited or referred to in Chapter IV has been classified into one of the six categories mentioned above.

Table 4

Statutory Reasons for Teacher Terminations

		BC*										Sask**			
Statutory Reason	Alta	RC	BR	Man	NB	Nfld	NWT	NS	Ont	PEI	Que	Old	New a)	New b)	Yukon
Neglect of Duty			X			X					X	X	X	X	X
Misconduct			X			X					X		X		X
Immorality											X	X		X	
Incompetence						X	X				X	X		X	
Unprof. Conduct												X		X	
Declining Enrolment								X							
Refusal to Obey Lawful Order			X										X		X
Disability												X		X	
Insubordination						X					X				
Criminal Conviction			X												
Unsatisfactory Learning Situation		X													
Refuses Medical Exam.						X									
Unsatisfactory Service										X					X
Incapable								X							X
Cause							X			X					
Other Cause												X		X	

* BC: RC = Review Commission; BR = Board of Reference.

**Sask: Old = Old Acts; New a) = New Act, No Notice; New b) = New Act, Notice.

Table 5

Termination Reasons in Cases

Province or Territory	Neglect of Duty	Misconduct	Incompetence	Elimination of Position	Insub-ordination	Criminal Conviction	Total
Alberta		2	6	13	2		23
British (Review Com.)			6				6
Columbia (Bd. of Ref.)	7	5			2	1	15
Manitoba	1	1	6	5	1		14
New Brunswick			4				4
Newfoundland		1	1				2
Northwest Territories			NO CASES				0
Nova Scotia				7		2	9
Ontario		2					2
Prince Edward Island	1						1
Quebec	2	2			1	1	6
Saskatchewan (Old Acts)	1		16	12	4		33
New Act No Notice			NO CASES HEARD				0
Notice			NO CASES HEARD				0
Yukon			NO CASES HEARD				0
TOTALS	12	13	39	37	10	4	115
PERCENTAGE	10.4	11.3	33.9	32.2	8.7	3.5	100

Incompetence

The use of the term "incompetence" when terminating a teacher's contract could mean unsatisfactory service, an unsatisfactory learning situation, any number of parental complaints, discipline problems (either too severe or not enough), disabled (either mentally or physically), or problems related to classroom management. In any event, the most commonly stated reason for the termination of teachers' contracts in the cases studied is incompetence. In Table 5 it is noted that in almost thirty-four percent of the cases studied, incompetence was given as a reason for termination.

It is questionable if statutory procedures in any province or territory, except British Columbia, provide for orderly termination of teachers who are clearly incompetent professionally. In some provinces and territories incompetence is stated as a statutory reason for termination. In Manitoba, if the reason for termination is related to incompetence, the teacher must be given a hearing by the school board. In New Brunswick, if termination is for incompetence, the teacher is without recourse to appeal if the termination has been preceded by a review of the teacher's file by the teacher's supervisor. A teacher in the Northwest Territories may be terminated at any time for incompetence. In Prince Edward Island, a teacher may be terminated for unsatisfactory service and in Quebec and Saskatchewan teachers may be terminated for incompetence.

In all provinces, except British Columbia, there are no special procedures set out in statute for determining the identification and removal of alleged incompetent teachers. The removal of incompetent teachers in most provinces follows the same appeal procedures as termination for any other reason.

Insubordination

"Insubordination" is a term that means "refusal or neglect to obey a lawful order of the board" as far as a reason for termination of teacher contracts is concerned. The above reasons were stated in almost nine percent of the cases referred to in this study. Refusal or neglect to follow a lawful order of the board is stated in the statutes related to termination of teacher contracts in British Columbia, Saskatchewan and Yukon and insubordination is stated in the statutes of Newfoundland and Quebec.

The above terms are usually employed by a school board when a teacher has not abided by school or school board regulations or when a teacher refuses to carry out an administrative directive.

It may well be that the concept of master and servant emerges when a school board terminates a teacher's contract because of insubordination. Although the master-servant relationship between employer and employee is not popular today, that concept still has an important influence on the relationship between school boards and teachers. Today's relationship is similarly expressed in terms of management rights or management prerogative. "I tell you what to do and you do it." Teachers tend to resist this attitude because they regard themselves as professionals and do not appreciate management telling them how to do their job. A second aspect of insubordination is exhibited when the teacher disagrees with the school board's position on an educational issue and deliberately opposes the school board and/or endeavours to recruit community support for his position. The current issue of class size serves as an example of teachers and parents versus school boards.

Neglect of Duty

"Neglect of duty," although stated as a reason for termination in five out of twelve statutes (Table 4), was used in ten and one-half percent of the cases (Table 5) referred to in this study. British Columbia, Newfoundland, Quebec, Saskatchewan and Yukon state neglect of duty as a reason for termination of teachers' contracts. Cases that cite neglect of duty as a reason for termination are generally more specific as to the exact nature of the duty that was neglected. The omission to perform a specific duty on one occasion would not be sufficient to warrant termination for neglect of duty, instead habitual or flagrant neglect would, generally, have to be demonstrated.

Neglect of duty does not always result in termination of contract. Recent "neglect of duty" cases appear to revolve around absence from teaching duties without authority. Teachers desirous of extending vacation periods have often been absent from duty without prior approval. When the absence is discovered, a teacher sometimes resigns in order to avoid termination. In addition, if the misdemeanor is referred to the teacher's professional organization, he is subject to disciplinary procedures.

Criminal Conviction

Termination because of a criminal conviction was stated in three and one-half percent or four cases studied and it is stated as a reason for termination in only one statute, British Columbia. Three of the criminal offences were for possession of a narcotic and one for possession of counterfeit money.

Criminal convictions do not always result in termination of contract. Criminal convictions are often the subject of disciplinary procedures employed by teacher organizations. As a result of discipline hearings a recommendation to cancel the teacher's certificate is made to the Minister. Without a licence to teach, a teacher's contract becomes invalid. If a criminal conviction results in a jail sentence, the teacher is unable to carry out his teaching duties and therefore loses his job. Some problems do arise when the penalty for a criminal conviction results in a suspended sentence. When that occurs a school board would have to decide if the presence of the teacher in the classroom was detrimental to the well-being of the students. In any event, circumstances of the misdemeanor have to be carefully considered.

Elimination of Position

In this study, "elimination of position" was stated as the reason for terminating a teacher's contract in thirty-seven cases or thirty-two percent of the cases studied (Table 5). "Elimination of position" includes the reasons of declining enrolments and staff reductions and is sometimes referred to as redundancy.

It appears as if school boards have been utilizing "elimination of position" as a reason for termination during the past few years. Perhaps the reason has been justified in some instances while in other cases it appears to have been used to eliminate a certain teacher rather than eliminating a position. Appeal tribunals have reinstated teachers if there was some doubt about the elimination of the position and awarded damages if it appeared that the position was eliminated and the teacher could not be accommodated elsewhere in the system.

Nova Scotia is the only province that includes declining enrolment as a statutory reason for terminating a teacher's contract. In the Northwest Territories, termination because of staff reduction can only take place at the end of the school year. In Ontario, the Minister may refuse to grant a Board of Reference, and the Minister may refuse to grant a Board of Reference if the termination is a clear case of redundancy.

The major difficulty with "elimination of position" is who decides when a teacher is surplus to staff and what criteria are utilized to determine who should be the one eliminated.

Harris (1978:31) comments on the problem of redundancy in civil matters:

> In times of economic uncertainty, it is to be emphasized that redundancy is not cause for dismissal: Paterson v. Robin Hood Flour Mills (1969), 68 W.W.R. 446; Gillespie v. Bulkley Valley Forest Industries (1973 6 W.W.R. 551, affirmed (1975) 1 W.W.R. 607; Baker v. Burns Foods (1977), 74 D.L.R. (3d) 762; Chadburn v. Sinclair Canada Oil Co. (1966), 57 W.W.R. 477. Clearly the economic motive in terminating the position does not relate to the individual's conduct, and hence is not regarded as adequate cause.

It is difficult to understand why redundancy is not regarded as cause for termination in civil cases, yet it has been successful in education. A partial explanation may lie in the clauses negotiated in collective agreements. Agreements in the private sector often contain clauses that protect workers' jobs whereas teacher collective agreements rarely contain protective clauses.

It may be that the use of "elimination of position" as a reason for termination of teachers' contracts should be accomplished through collective bargaining. Criteria, to determine if it is necessary to eliminate a position and, secondly, who that someone should be, might be negotiated and incorporated into collective agreements. If procedures are established, possible abuse of "elimination of position" for terminating a teacher's contract may be eliminated.

Misconduct

"Misconduct" is a term that also means "immorality" or "unprofessional conduct." These reasons were stated in over eleven percent of the cases cited in this study. The degree of misconduct must be weighed in relationship to the community in which the alleged misconduct occurred.

Public attention has always been directed to the personal conduct of public officials and employees. Public interest in teacher conduct has existed since the establishment of public education. Part of this interest results from the assumption that teacher conduct is an influence on pupil conduct. As a result, the public has been more restrictive in its expectations for the conduct of teachers than the conduct of the average citizen.

Recently there has been a more liberal attitude toward teacher conduct which follows a relaxation of moral standards by society. Stinnett (1968:242) contends that today's teachers "can do just about anything that a respectable citizen can do." It has become commonly accepted that teachers also have private lives and as long as their private activities do not affect their jobs as teachers they are protected from termination.

Absence of public interest in personal affairs of teachers was elucidated in this study in that only two teachers were terminated for alleged immoral behavior. However, this may only be partially true because there are other means of disposing of an "immoral teacher." For example, public pressure could quite easily convince the teacher to resign rather than progress through termination. Reasons for termination are sometimes masked in more socially acceptable terms such as misconduct.

Landmark Cases

Procedures for termination of teacher contracts in Canada are determined by:

1. statutory enactments;
2. regulations;
3. agreements; and
4. cases.

It is with the fourth of these sources that we are concerned here. Cases that have been heard by an appeal tribunal sometimes establish procedures but cases that have been the subject of judicial review are more likely to establish new procedures and become noted as landmark cases. Following are some of the more important landmark cases that shaped procedures for terminating teachers' contracts.

In the Board of Trustees of St. Albert District No. 6 case, referred to earlier, it was established that a school board exercised a quasi-judicial function in terminating the teacher's contract and was required to observe the rules of natural justice. Adherence to the rules of natural justice was also the subject of the 1973 Penner case referred to earlier. In this case, the Board of Reference ruled that a hearing by the superintendent did not comply with the rules of natural justice. This decision was upheld in the Supreme Court of Alberta and the Supreme Court added that there was no requirement to hold the hearing in public. Adequate notice was the subject addressed by the Board of Reference in Balachandra v. School Committee of the County of Barrhead No. 11, unreported, 1973. The Board of Reference held that the principles of natural justice had been violated and the teacher had not been given sufficient notice.

In Karwacki v. School Committee of the County of Mountain View No. 17, unreported, 1974, the Board of Reference held that a school board could not accumulate a number of misdemeanors over a long period of time and use them as reasons for termination. When a board knows of the incidents, deals with them and chooses to do nothing further, it amounts to a waiver or condonation of the incidents and cannot be raised to support a termination at a later date.

Religious and denominational rights were tested in two cases. In Kopchuk v. St. Boniface, unreported, 1972, the court held that the school board had authority to require the curriculum to be taught in the French language. In the Essex case, referred to earlier, the Supreme Court of Ontario held that the Board of Reference could not direct the continuance of a teacher's contract when the reason to justify termination had a denominational value.

In the Placsko case, referred to earlier, and a number of other cases, it has been well established that school boards are required to follow statutory requirements when terminating a teacher's contract.

The only Prince Edward Island case of Turner v. School Trustees of Regional Administrative Unit No. 4, unreported, 1973, is a landmark case in itself since it is the only case to occur during the time span of this study (1970-79). However, it is also a landmark case in that the Board of Reference held that the teacher had not been treated fairly in that she had not been advised that she was not performing up to expectations.

Summary

The major reasons for termination of teacher contracts in Canada are incompetence and elimination of position. Secondary reasons for termination include misconduct, neglect of duty and insubordination, whereas termination because of a criminal conviction is used very rarely.

Cases identified in this study as "landmark cases" have established new procedures and in some instances clarified or nullified changes in procedures.

CHAPTER VII

SUMMARY AND CONCLUSIONS

Introduction

The focus of this study has been directed toward the termination of teacher contracts in Canada. Procedures for termination have been studied and comparisons between the various systems made. Reasons for termination have been examined and classified with the major reasons for termination noted. In addition, termination procedures were discussed in terms of tenure and natural justice.

Summary

The British North America Act granted sovereign powers over education to the provinces. As a result, Canada has twelve different educational systems. Procedures for the termination of teacher contracts are, therefore, determined by each province and territory.

School boards, when terminating a tenured teacher's contract, are required to follow the statutory or agreed upon procedures and also school boards are required to adhere to the rules of natural justice. In order to protect their rights, awareness of common law, statutory enactments and rules of natural justice is necessary on the part of teachers.

Reasons for termination of teacher contracts are stated in some statutes. If reasons are not enumerated, school boards are still required to state reasons for termination. The most common statutory reasons are neglect of duty, incompetence, misconduct, and refusal or neglect to obey a lawful order of the board. When reasons are stated in statute, school boards are required to adhere to the statutory reasons.

Statutory requirements for termination and appeal of teachers' contracts are outlined in tables in the study. Most provinces have a probationary period for teachers ranging from one to three years with two years being the most common. In British Columbia initial appointment is continuous, however, a teacher may be placed on probation during the first nine months of employment. Quebec teachers are employed on one year renewable contracts and do have access to appeal procedures if their contract is terminated or if they are not re-engaged for the next school year. The probationary period is noted because a probationary teacher does not have tenure and in most instances does not have access to appeal procedures if the school board does not wish to retain the teacher on staff.

The length of notice for termination varies considerably. The range is from no notice to three months notice with thirty days notice being the most common.

Most provinces have a three person appeal body. The exceptions are Alberta, New Brunswick, Nova Scotia and the Yukon. Each of the above have a one-person board of appeal. The right of appeal is automatic in all provinces, however, in Ontario the Minister of Education may refuse to grant a hearing by the Board of Reference. There is no appeal to the Minister's decision.

In most provinces and territories termination and appeal procedures are contained in a school act. However, there are exceptions. In Newfoundland all procedures are contained in the collective agreement and are, therefore, negotiable. New Brunswick, Quebec and the Northwest Territories have some procedures in a school act and these procedures are either elaborated or modified by clauses in collective agreements.

Most statutes state that the decision of the appeal body is final and binding on the parties. British Columbia, Saskatchewan, Manitoba, and New Brunswick are the exceptions in that the statutes state that an appeal may be made to a higher court. Even though the statutes state that there is no appeal, an appeal is still possible by way of judicial review.

A great deal of litigation has arisen as a result of termination judgments by school boards across Canada. The litigation involves a number of different reasons for termination of teacher contracts. When reasons are enumerated in statute then the reasons given in the notice of termination must conform to the statutory reasons. In some instances, the statutory reasons are elaborated upon in the notice of termination. When reasons are not enumerated in statute, reasons given in a notice of termination could include virtually anything and tend to vary a great deal.

Four provinces, Alberta, Manitoba, New Brunswick and Ontario, do not specify reasons for termination in statute. Statutory reasons for the other provinces and territories vary from one statute to another. A number of statutory reasons are ambiguous; for example, the term "cause" or "just cause" is often stated as a statutory reason and is used when a teacher's conduct does not fall within a specified termination area. Because the phrase is open ended, it could be cited as the only reason for terminating a teacher's contract, however, the general practice is to specify the cause for termination.

The terms "unprofessional conduct," "misconduct" and "immorality" are sometimes used interchangeably and are equally ambiguous. Aspects of all three terms are complex and numerous. "Unprofessional conduct" is used in only one statute. Determination as to the constitution of unprofessional conduct is generally left to the professional organization and other reasons are usually used for termination of teachers' contracts. Composition of "misconduct" and "immorality" varies from one place to another so that what may be considered "misconduct" or "immoral" in one area, may be condoned in another. "Gross misconduct" is a matter of degree and the difference between misconduct and gross misconduct depends upon the judge.

The terms "incompetence" and "unsatisfactory service" are also quite vague when they stand alone. These reasons, similar to the ones mentioned above, need further delineation if they are to be meaningful.

Insubordination, neglect of duty, disability and refusal or neglect to obey a lawful order of the board are reasons frequently employed when describing the manner in which teachers discharge their responsibilities. These four terms reflect various aspects of a common problem. "Insubordination" is the failure of a teacher to abide by reasonable requests by the administration of the school or school board. The term "neglect of duty" is failure to carry out duties, both written and implied, in a competent manner. The term "disability" could mean either mental or physical inability to carry out duties required of a teacher. "Refusal or neglect to obey a lawful order of the board" is generally the result of a specific order of the board directed toward an individual teacher as a means of ordering the teacher to do something specific or to cease a course of action.

Termination, as a result of a "criminal conviction," is generally predicated on a notice of conviction. School boards need to be cognizant of a teacher's position when examining effects of a conviction upon that teacher's position.

In a number of cases, school boards have used the reason of "redundancy" or "elimination of position" as a means of removing an undesirable teacher. However, there have been other cases where a declining enrolment has necessitated a reduction in courses or grades offered in a school and the termination of one or more positions was necessary.

The reasons for termination of teacher contracts are numerous and often ambiguous. The numerous reasons can be grouped and reduced to a few categories. The categories for the purpose of this study have been classified as:

1. misconduct;
2. incompetence;
3. neglect of duty;
4. criminal conviction; and
5. redundancy.

A school board's decision to terminate a tenured teacher's contract may be appealed to a tribunal (usually called a Board of Reference). Cases may be appealed on the basis of:

1. the merits of the case;
2. a denial of the rules of natural justice;
3. non-compliance with statutory provisions;
4. inadequate notice; or
5. other reasons peculiar to the case.

The tribunal's decision may only be appealed if there is provision in some statute for an appeal. Only four out of twelve Canadian tribunals provide for an appeal to their decision.

If an appeal to a tribunals' decision is prohibited, their decision may be challenged by way of judicial review. Grounds for judicial review would include:

1. failure to comply with statutory provisions;
2. failure to abide by the rules of natural justice;
3. an error at law on the face of the record;
4. abuse of power;
5. bad faith;
6. failure of a public official to perform a duty; or
7. other grounds peculiar to the case.

One question frequently addressed by tribunals and courts is whether the school board in terminating a teacher's contract acted as an administrative or judicial or quasi-judicial body. As a result of examining cases on this point, the majority opinion appears to be that school boards serve a judicial or quasi-judicial function when deciding to terminate a teacher's contract. It could be argued that school boards must adhere to the rules of natural justice when terminating teachers' contracts.

Cases that are appealed on procedural grounds alter procedures used in subsequent cases if they are successful. If a case is unsuccessful, then the procedure is likely to carry on as before. A case that was appealed on the grounds that the school board refused to carry out the tribunal's orders illustrates that there is no formal procedure to require a school board to implement the tribunal's decision. Other cases appealed on procedural grounds have resulted in decisions that:

1. enable school boards to delegate authority to a committee to deal with terminating a teacher's contract;
2. require school boards to give teachers adequate notice for a hearing;
3. require school boards to abide by the rules of natural justice; and
4. prohibit school boards from "summoning" teachers to a school board meeting without providing reasons.

Reasons most often cited for termination in cases studied were: incompetence, elimination of position, misconduct, neglect of duty, and insubordination.

Finally, the discussions of current statutory and case law have been directed to teachers, administrators, school boards and teacher organizations. Teacher rights and liberties have advanced from days of master and servant, yet that concept of teacher and board still prevails. Reasons for terminating teacher contracts have changed since those cited by Swan in 1961. However, teachers can still be terminated for seemingly unjust reasons which can range from sex change to denominational reasons. Rules of natural justice appear to be adhered to in most Canadian provinces. However, teacher rights and liberties need further attention and elucidation.

Implications for Teacher Tenure

It has been shown by examining a number of cases that school boards are required to follow termination procedures established in statute or agreed upon in some other way. Following established procedures when terminating a teacher's contract is one aspect of tenure that has been well established in Canada. However, the probationary period practiced in all provinces and territories, except British Columbia, militates against tenure. A probationary period necessitates a temporary contract of employment for the probationary period and if a board does not want to retain the teacher then reasons are not necessary and the contract terminates on its termination date. If the probationary period was eliminated it would be necessary for boards and teachers to enter into continuing contracts in the first year of employment. If this were done it would have implications as far as hiring practices are concerned. It would also make new teachers more secure in their positions. It may even have implications for teacher training institutions, perhaps they would begin screening students into the faculty and be concerned with the quality of students graduated.

Similarly, although the rules of natural justice are followed when terminating teachers' contracts in most parts of Canada, some instances were identified where the rules were not followed. One rule of natural justice is that reasons for termination of contract must be provided. The rules of natural justice have implications for termination of teachers' contracts in Manitoba. In Manitoba, school boards are not required to give reasons for termination unless teachers request reasons, then they are required to accede to the request. There is also a problem with regard to ambiguity of the reasons provided. Teachers, when in receipt of a notice of termination that contain ambigous reasons, are well advised to request school boards to provide further particulars.

Once a teacher is satisfied that reasons have been supplied and the reasons are relatively free from misunderstanding, natural justice requires that the teacher receive a fair hearing. This requirement has implications for Manitoba and Ontario. Manitoba teachers are not given a hearing unless reasons for termination are related to incompetency or character of the teacher. Ontario teachers are not given a hearing by the school board and may be refused a hearing by the Board of Reference if the Minister refuses to order a hearing. If justice is to be done, school boards and departments of education ought to adhere to the rules of natural justice.

Do Canadian teachers have security of tenure? Generally speaking, Canadian teachers are protected from indiscriminate termination by employers and do have security of tenure; the amount of tenure cannot be measured. There is no such thing as absolute tenure; rather tenure is a matter of degree.

Implications for School Administrators

School superintendents, as executive officers of school boards, are required to identify teachers whose contracts may be terminated. Subsequently, superintendents must prepare the preliminary case against the teacher in question. Superintendents, while preparing such a case, should:

1. follow the rules of natural justice;
2. follow statutory provisions;

3. provide teachers with fair and unbiased evaluations;
4. formulate well founded reasons based on fact;
5. act reasonably;
6. act in good faith; and
7. obtain counsel.

The judicial system decides upon the admissibility of reasons for termination as well as whether or not the teacher has been treated fairly and reasonably. Circumstances of each case are different, therefore, each case has to be considered on its own merits.

However, what reasons can administrators expect to have accepted by an appeal body? Utilizing the six major reasons identified in this study some comment would be appropriate.

Incompetence. The inherent difficulty in asserting incompetence lies in establishing some objective standard of performance. Appeal boards consider all mitigating factors that may explain alleged incompetence such as proper placement in accordance with training and experience. If a teacher's job is in jeopardy, it is necessary to provide adequate warning and opportunity to correct existing deficiencies.

Elimination of Position. When utilizing "elimination of position" as a reason for termination administrators should establish criteria to determine who should be eliminated. Criteria could include reverse seniority (last in - first out), subject, or program area, and grade level. In all cases, effort should be made to relocate teachers in positions where they may be able to function more adequately.

Misconduct. The employer must show more than mere dissatisfaction with the teacher's performance. Real misconduct must be demonstrated and unless it was of a very serious nature, on more than one occasion. There is no fixed rule defining the degree of misconduct.

Neglect of Duty. The exact nature of the neglect of duty would have to be specified in the reasons for termination. Generally, an isolated neglect of duty would not in itself be sufficient cause to warrant termination. Wilfull neglect of duty is generally regarded as justifiable cause for termination. Refusal of a teacher to carry out lawful and reasonable orders will generally be cause for termination. The refusal, however, must be intentional and deliberate.

Insubordination. A single act of insubordination will not generally be sufficient to warrant termination. Provocation may be pleaded as a defence to the allegation of insolence. Personality clashes that result in insubordination are not grounds for termination.

Criminal Conviction. When a teacher is charged with a criminal offence the school administration has to decide if the teacher's presence will be detrimental to the well being of students in the classroom. That decision will depend upon the nature of the offence. If the administration decides that the teacher should not be in the classroom, then the teacher is suspended pending the outcome of the trial. When a teacher is convicted of a criminal offence administrators have to decide whether or not to proceed with termination. That decision will depend upon the nature of the offence with due regard to the effect of the teacher's presence in the classroom.

At the present time, the elimination of "undesirable" teachers from the classroom lies with school administrators. Consequently, the onus to have their cases well prepared rests with administrators.

Conclusions from Landmark Cases

Procedures established as a result of landmark cases have important implications for subsequent termination procedures. Landmark cases identified in this study established the following procedures in the provinces in which the case was heard and may have an influence in other provinces:

1. school boards are required to follow the rules of natural justice;
2. hearings by the superintendent do not comply with the rules of natural justice;
3. public hearings are not required;
4. teachers must be given adequate notice prior to a hearing;
5. school boards cannot accumulate misdemeanors over a long period of time and use them as reasons for terminating a teacher;
6. school boards can require the curriculum to be taught in a particular language;
7. reasons for termination that have a denominational value are upheld by courts;
8. school boards are required to follow statutory requirements when terminating a teacher's contract; and
9. teachers must be advised that they are not performing up to expectations prior to being terminated.

Establishment of the above procedures have implications for school boards and administrators when terminating teachers' contracts.

Conclusions

In concluding this study of the procedures and reasons for termination of teacher contracts in Canada, several observations should be made.

The composition of the appeal body varies from one province to another. A number of statutes provide for appointees to each appeal body that is established. Although educators are appointed, the trend toward greater participation by the legal profession is apparent.

It has been observed that procedures for termination vary from one province or territory to another and although there are similarities there are also distinct differences. Likewise, the reasons for termination are numerous and in some instances ambiguous. The differences in procedures and the various reasons employed result in a great deal of confusion when dealing with the termination of teachers' contracts. The major reason for variances in procedures and reasons appears to rest in the B.N.A. Act, which enabled provinces to establish their own educational systems.

Most commonly stated reasons for termination contained in statutes are: incompetence, neglect of duty, misconduct, and refusal or neglect to obey a lawful order of the board. Whereas the major reasons stated in cases were incompetence and elimination of teacher's position. Minor reasons stated in cases were neglect of duty, misconduct, insubordination and criminal conviction. Incompetence not only appeared in statutes as a reason for termination but also constituted the major reason (almost thirty-four percent of the cases) for termination of teachers' contracts.

The second major reason for termination of teacher contracts was elimination of position. Even though that reason appeared in only one statute (Nova Scotia) it was utlized in thirty-two percent of the cases cited in this study. It appears as if school boards have been relatively successful in the use of "elimination of position" as a reason for terminating teachers' contracts. As this reason has been relatively unsuccessful in civil cases it is difficult to understand why it has been successful in education. It appears as if school boards have used "elimination of position" and found that it was successful. Could it be that boards continued to use the same reason even though the real reason may have been different?

Recommendations

As a result of this study it is apparent that, in Canada, there is a great deal of diversity in procedures and reasons for termination of teacher contracts. Such diversity was fostered by the provisions of the B.N.A. Act. While there is some virtue in uniformity for its own sake, there is merit in having similarity in legal provisions and reasons for termination of teacher contracts across Canada. A teacher who moves from one province or territory to another is not only faced with different procedures but also that teacher is confronted with different reasons. In the interest of mobility and consistency, it would seem desirable to have the same legal protection in one part of the country as in another. With present communication channels between provinces and territories, such as the Council of Ministers, there is no reason for procedures to be as diversified as they are at present. It is therefore recommended that:

a Canadian model for termination of teacher contracts be developed.

Such a model should include the following provisions:

1. rigid adherence to the rules of natural justice;
2. three levels of appeal, school board, appeal board and the courts;
3. appeal to the courts should be on the basis of matters of law and not of fact;
4. rigid time constraints; and
5. a three person appeal board comprised of a judge as chairman and two educators as members.

Rationale. Adherence to the rules of natural justice is in keeping with a sense of fairness. To quote an old cliche "not only should justice be done but it should be seen to be done."

A first line of appeal to the school board is in keeping with the rules of natural justice. Appeal to an appeal board should be granted as a right with no provision for a denial of that right. An appeal to the courts should be based solely on errors of law in order to reduce the accessibility of the courts to termination matters.

Time constraints should be short and rigid in order to have the case proceed as quickly as possible. No one benefits from cases that are drawn out over long periods of time.

With a judge and two educators on the appeal board, decisions should be legally and educationally sound. Hopefully, high quality remedies which are socially responsible as well as educationally beneficial would result.

Because of the prevalence, complexity and apparent inability of non-educators to deal with incompetence it is further recommended that:

> *termination for alleged incompetence be handled by means of a separate and independent process than termination for other reasons.*

The process should include the following features:

1. adherence to the rules of natural justice;
2. several evaluations by more than one person over a period of time;
3. at least one evaluator from outside the school system;
4. a panel of educators to rule on the alleged incompetence; and
5. appeal to the courts on matters of non-compliance with proper procedures.

Rationale. When an evaluation is written about a teacher, the teacher should have the opportunity to rebut information contained in the evaluation. Application of the rules of natural justice would allow teachers to state their reactions to an evaluation report.

In order to assure validity and reliability, evaluations should be made by more than one person on more than one occasion. To eliminate the possibility of bias an external evaluator should be utilized.

A panel comprised entirely of peers would be in a good position to assess the alleged incompetence. The decision of the panel of peers should be final and binding with the exception of an appeal to the courts on the basis of non-compliance to procedures.

Because of the possible misuse of "elimination of position" as a reason for termination of teacher contracts it is recommended that:

> *"elimination of position" be carefully monitored as a reason for termination of teacher contracts.*

Monitoring "elimination of position" as a reason for termination an appeal board should determine:

1. why the position was eliminated, was it because of economic uncertainty, declining enrolment, staff reduction or school closure;
2. how the teacher was selected as the one to be terminated, had the school board established criteria to determine who should be eliminated;
3. whether the school board endeavoured to find another position within the system for the teacher;
4. if the school board hired other teachers with similar qualifications to the one being terminated; and
5. if it was really necessary to terminate the teacher's contract.

Suggestions for Further Study

Research into the reasons and procedures for termination of teacher contracts, either provincially or federally, has been limited. This broad study has dealt with termination of teacher contracts in Canada.

Further research could be conducted into certain areas identified in this study. Some specific suggestions that emanate from this study are:

1. A detailed study of the procedures and reasons for termination of teacher contracts could be carried out for each province and territory. Depending upon the number of cases that have occurred in each province or territory, the study could cover a span of five to thirty years.
2. A study into fair and just procedures for terminating alleged incompetent teachers should be made.
3. A detailed study into termination of teachers' contracts where the reason stipulated was "elimination of position" should be made.
4. A comparative study of procedures and reasons for termination of teacher contracts between the United States and Canada may also be beneficial.

Speculation about Future Trends

Since North America is presently the most litigation prone society in the world, it is reasonable to expect that the frequency of teacher termination cases will increase significantly during the next decade.

In the past, futurists could make relatively accurate predictions in Canada by observing trends in the United States. However, it is no longer accurate to assume that trends and attitudes in Canada lag behind their southern counterparts. In both Canada and the United States, many factors will contribute to an increase in termination of teacher contracts for alleged incompetence and teacher malpractice. Such factors may include teacher surplus, declining enrolment, vocalized public awareness, economic unrest, and a movement toward quality education. Similarly, the human rights movement must also be considered. Teachers, perhaps more than any other professional group will realize that they are entitled to basic human rights and freedoms. This realization will probably result in more termination appeals involving human rights.

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APPENDICES

APPENDIX A

ALBERTA SCHOOL ACT, (R.S.A. 1970)

APPENDIX A

ALBERTA SCHOOL ACT, (R.S.A. 1970)

78. (1) A board may terminate

(a) a contract of employment with a teacher, or

(b) a designation of a teacher made pursuant to section 82,

after giving the teacher notice of the termination not less than 30 days prior to the effective date of the termination.

(2) A notice of termination of a contract of employment or of a designation shall specify the reasons for the termination and in each case the board shall act reasonably.

(3) A board may suspend from his duties any teacher who has been served with a notice of termination of contract or of a designation.

(4) A notice of termination of a designation or the termination thereof does not terminate a contract of employment.

(5) A teacher who has been suspended is entitled to receive pay until the effective date of termination.

80. (1) A teacher may terminate a contract of employment with a board after giving the board 30 days' notice in writing of his intention.

(2) Where a teacher has terminated his contract of employment with a board before rendering any service under the contract, no other board shall employ the teacher unless the prior approval of the board with which the teacher's contract was terminated, is first obtained.

81. Subject to section 77, subsection (2) no notice of termination of a contract of employment may be given by a board or a teacher

(a) in the 30 days preceding, or

(b) during

a vacation period of 14 or more days' duration.

84. (1) The Lieutenant Governor in Council shall appoint a Board of Reference consisting of not more than nine persons.

(2) The members of the Board of Reference shall receive such remuneration and expenses as the Lieutenant Governor in Council determines.

85. (1) Where a disagreement arises between a board and a teacher with respect

(a) to a termination of a contract of employment, or

(b) to a termination of a designation, or

(c) to the refusal of a board to give an approval pursuant to section 80, subsection (2),

a board or a teacher, may appeal to the Minister who shall refer the appeal to the Board of Reference.

(2) An appeal may be withdrawn at any time before or during the hearing of the appeal or before the decision of the Board of Reference.

86. (1) The notice of appeal shall be in writing and shall set out the nature of the appeal.

(2) The board or teacher appealing shall within 14 days of the receipt of the notice of termination of contract send by registered mail

(a) to the Minister

(i) the notice of appeal, and
(ii) $50 (which is held by the Minister pending the decision of the Board of Reference),

and

(b) to the other party to the appeal a copy of the notice of appeal.

87. (1) The Board of Reference shall set a date for the hearing of the appeal and notify both parties.

(2) The Board of Reference may make such investigation as it considers necessary but before making any decision shall give both parties to the appeal an opportunity to be heard.

(3) Notwithstanding any provision of this Act concerning the

(a) termination of a contract of employment of a teacher, or

(b) termination of a designation of a teacher, or

(c) suspension of a teacher,

and matters connected therewith, the Board of Reference may make such order as it considers just with respect to the appeal.

(3.1) Without restricting the generality of subsection (3), the Board of Reference may, among other orders, make all or any of the following orders:

(a) an order providing that the termination date of the contract of employment or of a designation be changed;

(b) an order to provide for the reinstatement of a contract of employment or of a designation (but only where the teacher is the party appealing);

(c) an order for the payment of money, equivalent to salary, for any period whether before or after the termination of the contract or of a designation that a salary has not been paid;

(d) an order providing that no salary be paid for a specified period.

(4) Each party to the appeal shall pay his own costs unless the Board of Reference otherwise orders and in the event that no order as to costs is made, the $50 held by the Minister shall be repaid to the person who paid it to him.

(5) The Board of Reference may make one or more of the following orders concerning the $50 paid to the Minister:

(a) that it be paid in whole or part to the person against whom the appeal was made in payment or part payment of costs;

(b) that it be retained in whole or part by the Minister and paid into the General Revenue Fund;

(c) that it be repaid in whole or part to the person who paid it to the Minister.

(6) For the purpose of making an investigation pursuant to this section the Board of Reference has the powers of a commissioner under The Public Inquiries Act.

APPENDIX B

BRITISH COLUMBIA PUBLIC SCHOOLS ACT
(Consolidated to January 20, 1978)

APPENDIX B

BRITISH COLUMBIA PUBLIC SCHOOLS ACT
(Consolidated to January 20, 1978)

128. (1) The Board of each school district shall, as required from time to time, after considering the recommendation of the District Superintendent of Schools, appoint, or authorize the appointment of, properly qualified persons as teachers in the school district, assign or authorize the assignment of those teachers under clause (e) of subsection (1) of section 9, and enter into contracts with them, as provided in this Act.

(2) Every appointment made by a Board, except a probationary or temporary appointment made under the regulations, and every contract relating thereto, shall be deemed to be and to constitute a continuing contract until terminated in the manner provided in this Act; but no appointment made to fill a vacancy caused by the dismissal or termination of the contract of a teacher who, within ten days from the receipt by him of the written notice of dismissal or termination, sends by registered mail to, or serves on, the Board a copy of an appeal or request for review sent by him to the Minister shall be deemed to be or constitute a continuing contract, unless the action of the Board in dismissing that teacher or terminating that teacher's appointment is confirmed by a Board of Reference or Review Commission.

(3) A Board may authorize the assignment of teachers under section 9(1)(e) as

(a) principals, head-teachers and vice-principals, or

(b) school district supervisory personnel in such numbers and with such powers and duties as may be prescribed by the regulations, and may, under section 129, transfer a teacher so assigned.

(4) A person who was appointed to a position referred to in subsection (3) as enacted by the Public Schools Amendment Act, 1976, under a provision respecting such appointments that was in force at any time prior to the coming into force of that subsection, shall be deemed to have been assigned to the position under that subsection.

130. (1) A Board may at any time suspend a teacher from the performance of his duties

(a) for misconduct, neglect of duty, or refusal or neglect to obey a lawful order of the Board; or

(b) where the teacher has been charged with a criminal offence and, in the opinion of the Board, the circumstances thereby created render it inadvisable for him to continue his duties.

(2) A Board that has suspended a teacher shall

(a) appoint a date within seven days of the suspension on which date the teacher shall be interviewed by the District Superintendent of Schools and the Board, or the District Superintendent of Schools and a committee of the Board; and

(b) where the teacher is suspended pursuant to clause (a) of subsection (1), within seven days of the interview, reinstate the teacher, or, after such notice as is required by the regulations, dismiss him upon the same grounds upon which he is suspended or take such other action as may be permitted by the regulations; or

(c) where the teacher is suspended pursuant to clause (b) of subsection (1) and

(i) is acquitted of the charge, reinstate him forthwith
- (A) after the expiry of the appeal period; or
- (B) after the expiry of the period for appealing from the last court to which an appeal from the acquittal is taken and in which he is acquitted

whichever is the later date; or

(ii) is convicted of the charge may, after such notice as is required by the regulations, dismiss him
- (A) after the expiry of the appeal period; or
- (B) after the expiry of the period for appealing from the last court to which an appeal from conviction is taken and in which he is convicted

whichever is the later date.

(3) A Board may pay a teacher his salary for the period during which he is under suspension, either during or following the suspension.

(4) The teacher may be accompanied by another teacher or by a member of the staff of the British Columbia Teachers' Federation who may represent him or advise him during the interview referred to in this section.

130A. (1) Subject to the provisions of subsection (7) of section 129, and the regulations, either party to a continuing contract under subsection (2) of section 128 may terminate the contract by giving in writing at least thirty days' notice to the other party, and the termination shall take effect at the end of a school term, or, by agreement, at an earlier date.

(2) Except as otherwise provided in this Act, a Board shall, at least thirty days prior to the issuance of a notice of termination of a contract, give the teacher a written notice of its intention to give a notice of termination and shall set a time for a hearing within twenty days of the issuance of the notice of intention, at which the teacher shall have the opportunity to be interviewed by the District Superintendent of Schools and the Board, or by the District Superintendent of Schools and a committee of the Board.

(3) The teacher may be accompanied by another teacher or by a member of the staff of the British Columbia Teachers' Federation who may represent him or advise him during the interview referred to in subsection (2).

133. (1) The Board shall report forthwith to the Ministry a termination, dismissal, or suspension of any teacher in the school district, with the reasons therefor.

(2) Where a teacher has been dismissed by the Board for gross misconduct, nothing in this Act confers on him a right to any length of notice of dismissal or to salary in lieu of notice.

(3) Where the assignment of a teacher to a post of special responsibility in the school district has terminated, and where the teacher has been reassigned, and where the salary of the teacher after his reassignment is not less than the salary that he would have received in the position that he held prior to his assignment to the post of special responsibility, the teacher may not appeal from the action of the Board in making the reassignment.

134. (1) Within 10 days after receipt of a notice under section 130 (2), a teacher may appeal under the regulations to the Minister against a suspension for a period exceeding 10 days or a dismissal.

(2) The Minister shall refer an appeal under subsection (1) to a Board of Reference consisting of three members appointed by the Minister, the Chairman of which shall be appointed from among members of the Law Society of British Columbia nominated by the Chief Justice of British Columbia; and one member shall be appointed from among persons nominated by the executive of the British Columbia Teachers' Federation; and one member shall be appointed from among persons nominated by the executive of the British Columbia School Trustees' Association.

(3) On the request of the Minister, the Chief Justice of British Columbia and each executive shall, within fourteen days, notify the Minister of the names of at least two persons nominated by him or by it for the purposes of this section.

(4) If the Chief Justice of British Columbia fails to notify the Minister of his nominees, within the time limit in subsection (3), the Minister shall appoint some suitable person as Chairman.

(5) If either or both executives fail to notify the Minister of their nominees within the time limit in subsection (3), the Minister shall appoint suitable persons as members of the Board of Reference.

(6) A Board of Reference shall, in accordance with regulations, consider the appeal referred to it, and shall reach a decision to allow or disallow the appeal, and the decision shall, except as provided in subsection (7), be final and binding upon the teacher and the Board, and if the appeal is allowed, the Board shall reinstate the teacher forthwith.

(7) Either party to an appeal to a Board of Reference may, within thirty days of the decision of the Board of Reference, appeal the decision to the County Court or Supreme Court in accordance with their respective Rules; but no reinstatement pursuant to subsection (6) shall take place during the course of the appeal or any subsequent appeal therefrom.

(8) For the purposes of an appeal referred to it, a Board of Reference constituted under this section shall have the powers and privileges of a Commissioner appointed under the Public Inquiries Act, and sections 7, 10, and 11 of that Act apply to an appeal under this section.

(9) The expenses necessarily incurred by a Board of Reference under this section, and such allowances to, and expenses of, its members as the Lieutenant-Governor in Council may determine, shall be paid from moneys appropriated by the Legislature for that purpose.

(10) The expenses referred to in subsection (9) do not include the fees or expenses of the parties to the matter in dispute, or their counsel, agents, or witnesses.

135. (1) Except in the case of a teacher who is on a probationary appointment, a teacher whose appointment or contract has been terminated by a Board pursuant to section 130A of this Act may, within ten days of receipt of notice of termination, and in accordance with the regulations, request the Minister to direct that a Review Commission review such termination.

(2) Upon receipt of a request under subsection (1), the Minister shall direct the Chairman of one of the Review Commissions established under this Act to proceed forthwith with a review of the termination.

(3) The Review Commission designated under subsection (2) shall, in accordance with the regulations, investigate and review the matters referred to it, and shall confirm, or reverse, the action of the Board, and the decision of the Review Commission is final and binding upon the teacher and the Board.

(4) Where a Review Commission directs that the action of the Board be reversed, the Board shall reinstate the teacher forthwith.

(5) The Minister shall appoint, whenever required, such number of Review Commissions as he considers necessary.

(6) Each Review Commission shall consist of

(a) a chairman appointed by the Minister, from among persons qualified under clause (b) within the five years immediately preceding the date of his appointment;

(b) two members appointed by the Minister, one of whom shall be from among persons nominated by the executive of the British Columbia Teachers' Federation and one of whom shall be from among persons nominated by the executive of the British Columbia School Trustees' Association each of whom shall be

(i) a person actively engaged in the practice of education in the Province as evidenced by appointment to the staff of a Board, a college, university, or some other educational institution or organization established under this Act or the Universities Act; and

(ii) not a member of the staff of either the British Columbia Teachers' Federation or the British Columbia School Trustees' Association.

(7) Members, including the chairman, shall hold office at the pleasure of the Minister.

(8) If either party fails to notify the Minister of its nominees within fourteen days of receipt of his request for the names of nominees, or if both parties fail so to notify the Minister, the Minister may appoint any suitable person as a member of the Review Commission on behalf of the party that failed to nominate a member.

(9) A person employed by a Board, a college council, or a university who is appointed pursuant to this section shall be granted leave of absence with full salary to permit him to carry out his duties on the Review Commission, but the Board, college council, or university shall be reimbursed as provided in subsection (14).

(10) For the purposes of investigating the matters which it has under review, a Review Commission constituted under this section shall have the powers and privileges of a Commissioner appointed under the Public Inquiries Act, and sections 7, 10, and 11 of that Act apply to a matter under review under this section.

(11) The expenses necessarily incurred by a Review Commission under this section and such allowances to, and other expenses of, its members as the Lieutenant-Governor in Council may determine, shall be paid from moneys appropriated by the Legislature for that purpose.

(12) The expenses referred to in subsection (11) do not include the fees or expenses of the parties to the matter under review, or their counsel, agents, or witnesses.

(13) The Chairman of a Review Commission, other than one granted leave of absence pursuant to subsection (1), may be paid, from the moneys appropriated by the Legislature for the purpose, an allowance not to exceed that determined by the Lieutenant-Governor in Council to be paid to the Chairman of a Board of Reference; but such allowance shall be paid only with respect to days during which the Commission is engaged in reviewing a matter directed to it by the Minister.

(14) The Lieutenant-Governor in Council shall reimburse a Board, college council, university, or other educational institution or organization from funds voted by the Legislature for the purpose, for the salary of a person appointed pursuant to subsection (6), for the period of leave of absence granted pursuant to subsection (9).

APPENDIX C

BRITISH COLUMBIA PUBLIC SCHOOLS ACT REGULATIONS (CONSOLIDATED TO JUNE 30, 1977)

APPENDIX C

BRITISH COLUMBIA PUBLIC SCHOOLS ACT
REGULATIONS (CONSOLIDATED TO JUNE 30, 1977)

57. [128, 130A]*(1) Without restricting the powers of a Board to terminate the contract of or dismiss a teacher, the Board may, at any time during the first nine months of a teacher's appointment, exclusive of

(a) any leave of absence during or extending beyond those months;
(b) the months of July and August,

terminate his continuing contract and place him on a probationary appointment.

(2) Where a teacher is placed on a probationary appointment under subsection (1) of this regulation, or under subsection (3) of section 128 of the Act, a Board shall give the teacher written notice to that effect, such notice to be issued only after consultation with the District Superintendent of Schools and consideration of any reports issued by the District Superintendent of Schools, or where the teacher is assigned to a school to which regulation 95 applies, by the District Superintendent of Schools and the principal.

58. [128] Unless cancelled pursuant to the provisions of section 59 of these regulations, a probationary appointment made pursuant to section 57 of these regulations shall be effective until

(a) the Board, not less than six calendar months following the placement on probation, rescinds the probationary appointment; or
(b) the 30th day of June in the school-year immediately following the school year in which the probationary appointment is made,

whichever occurs earlier, and shall then become a continuing contract pursuant to the Act.

59. [128] A Board may cancel a probationary appointment by giving 30 days' notice in writing, provided that the notice shall not be given during the first 30 days of the probationary appointment, and that there shall be at least 20 teaching-days included in the notice period, such notice to be issued only after consultation with the District Superintendent of Schools and consideration of a report issued by the District Superintendent of Schools pursuant to section 9 of the Act, or where the teacher is assigned to a school to which regulation 95 applies, consideration of reports by both the District Superintendent of Schools and the principal.

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*Numbers in brackets [ ] refer to sections of the Act.

60. [128] A teacher who has received notice that his probationary appointment is cancelled has the right to discuss the reasons for the cancellation with the principal of his school and the District Superintendent, and may, where the Board so determines, be interviewed by the District Superintendent and the Board or the District Superintendent and a committee of the Board, but the right of appeal or review, as provided in sections 134 and 135 of the Act, does not apply with respect to the cancellation of a probationary appointment pursuant to regulation 59.

60A. [128] A teacher may be accompanied by another teacher or by a member of the staff of the B.C.T.F., who may represent him or advise him, during an interview referred to in section 60 of these regulations.

61. [128] A teacher on a probationary appointment may terminate his appointment by giving the Board at least 30 days' notice in writing, such notice to be effective at the end of a school term.

62. [128, 130A] Except as provided in regulation 57, a Board may terminate a continuing contract under section 130A of the Act, and may recommend to the Minister the suspension or cancellation of the certificate of that teacher, only after receipt by the Board of at least three reports indicating that the learning situation in the class or classes of the teacher is less than satisfactory, or where a teacher is appointed pursuant to subsection (3) of section 128, indicating that the performance of the teacher in carrying out his administrative or supervisory duties is less than satisfactory, issued in accordance with the following:

(a) The three reports shall have been issued in a period of not less than 12 nor more than 24 months, except as provided in clause (e);

(b) At least one of the reports shall be a report of a District Superintendent of Schools, a Superintendent of Schools, or an Assistant Superintendent of Schools;

(c) The other two reports shall include only reports of

- (i) a District Superintendent of Schools, a Superintendent of Schools, or an Assistant Superintendent of Schools;
- (ii) a director of instruction, the reports to be issued in accordance with the regulations;
- (iii) the principal of a school to which the teacher is assigned, provided that regulation 95 is applicable to that school and that the reports were issued in accordance with the regulations;

(d) Where more than one of the three reports is written by the same person, at least six months shall have elapsed between the writing of the first and the final report by that person;

(e) (i) Where the Board has, after the receipt of one or more such reports, recommended to the teacher, and the teacher has accepted the recommendation, that the teacher undertake an agreed program of professional or academic instruction, or both, the remaining report or reports shall be based on inspection of the learning situation or other duties of the teacher not less than three, nor more than six, months after the teacher has returned to his duties and each report shall be issued within two weeks of the inspection;

(ii) The provisions of section 129A shall apply to an agreement under this regulation.

63. [130] (1) Where a Board suspends a teacher under section 130 of the Act, it shall send, by registered mail addressed to the teacher at his last-known address, a notice of suspension, and shall state therein the grounds for the suspension.

(2) Where a Board dismisses a teacher under section 130 of the Act, it shall send, by registered mail to the teacher at his last-known address, a notice of dismissal that shall be effective not longer than 30 days following the date that the notice is mailed.

(3) Where a Board has suspended a teacher under section 130 (1)(a) of the Act, it may, within seven days of the interview under section (2)(a), direct that the teacher

(a) be further suspended for such period of time as the Board may decide, terminating not later than the end of the term next following the term during which the teacher was suspended, and may also direct that there shall be partial or complete loss of salary and benefits during all or part of the past or future part of the suspension or both; or

(b) be reinstated immediately subject to the loss of salary and benefits for any portion or all of the period of suspension,

and the teacher shall, unless he resigns in accordance with the provisions of this Act, resume his regular duties at the end of the period of suspension.

64. [130] The provisions of section 130 of the Act for suspension and dismissal apply to every teacher, whether on probationary or temporary appointment, or continuing contract.

65. [134, 135] All requests for appeal or review shall be made in writing, with copies to the Board concerned.

66. [134, 135] A deposit of $150 shall accompany each appeal or request for review.

67. [134, 135] All requests for appeal or review and any other correspondence connected with such action shall be transmitted by registered mail.

68. [134, 135] Upon receipt of a request for an appeal or review, the Minister shall notify the Board concerned, and the Board shall, within five days of the receipt of the notice, desposit the sum of $150 with the Minister,

together with a full statement of the reasons for the notice of dismissal or termination of contract, and shall at the same time provide the teacher with a copy.

69. [135] Where a Board submits reports under section 62 of these regulations to a Review Commission, the Commission shall require that the Board also file any other such reports issued between the date of the first and the last such report.

69A. [134, 135] (1) At any proceeding before a Board of Reference a teacher may be accompanied or represented by counsel.

(2) At any proceeding before a Review Commission a teacher may be accompanied by another teacher or by a member of the staff of the British Columbia Teachers' Federation, who may represent him or advise him.

(3) At any proceeding before either a Board of Reference or a Review Commission, a teacher and the Board, or their respective representatives, may be present during all presentations to the Board or the Commission.

69B. [134, 135] If either a Board of Reference or a Review Commission does not reach a decision within 30 days of the date upon which it

(a) had an appeal referred to it by the Minister; or
(b) was directed by the Minister to proceed with a review,

the Minister may appoint one or more officials of the Ministry to consider the appeal or request for review, and they shall have, in such instances, the powers of a Board of Reference or Review Commission, whichever is appropriate.

70. [134, 135] The Chairman of a Board of Reference or Review Commission shall, within three days of reaching a decision, notify the teacher, the Board, and the Ministry of the decision of the Board of Reference or Review Commission, and shall forward to the Ministry the documents or certified copies thereof examined by the Board of Reference or Review Commission.

71. [134, 135] The Minister shall retain for not less than 60 days all documents or certified copies thereof forwarded to him by the Chairman of a Board of Reference or Review Commission.

72. [134, 135] If the action of the Board is confirmed by the Board of Reference or Review Commission, the deposit of the Board shall be returned to it, and the deposit of the teacher shall be paid into the Consolidated Revenue Fund.

73. [134, 135] If the appeal of the teacher is allowed by a Board of Reference, or if the action of the Board is reversed by a Review Commission, the deposit of the teacher shall be returned to him, and the deposit of the Board shall be paid into the Consolidated Revenue Fund.

74. [128] A Board may appoint a teacher

(a) for a period not exceeding one year, to any position temporarily existing or temporarily vacant;

(b) for a period not exceeding the remainder of the existing school-year, to any position which has become vacant during a school-year,

by notice in writing stating that it is a temporary appointment, specifying the period of its duration, and indicating the salary or the method by which the salary shall be determined.

75. [128] At the expiration of the period specified in the notice, a temporary appointment shall be deemed to be terminated.

76. [128] The Board of a school district may, with the approval of the Ministry, renew a temporary appointment for one or more successive periods, each not exceeding one year's duration, where the renewal of the temporary appointment is to fill a vacancy caused by the absence of a teacher who has been granted leave of absence pursuant to section 129A.

77. [128] A Board shall confirm in writing or by telegram to a teacher within 48 hours any verbal offer of appointment.

78. [128] If the teacher to whom an offer of appointment is made by a Board does not accept or reject the same, either by telegram or in writing within 48 hours of its receipt, it shall be assumed to be rejected.

79. [128] An offer of appointment shall be assumed to have been accepted when the acceptance has been mailed, with postage prepaid, or sent by telegram to the Board.

80. [128] An acceptance of an offer of appointment shall be final and binding upon the Board and the teacher.

96. [152] Reports made under regulation 95 shall

(a) be based on a number of supervisory visits to the classroom of the teacher as well as on the general work of the teacher in that school;

(b) be completed and filed on or before the last school-day in April;

(c) by made in triplicate;

(d) contain an assessment of the learning situation in the teacher's classes and such recommendations for improvement therein as he may consider necessary;

(e) contain a statement that, in the opinion of the principal, the learning situation is satisfactory or less than satisfactory.

APPENDIX D

MANITOBA PUBLIC SCHOOLS ACT
R.S.M. 1970

APPENDIX D

MANITOBA PUBLIC SCHOOLS ACT
R.S.M. 1970

281.(1) Every agreement between a school district and a teacher shall be in writing, signed by the parties thereto and sealed with the seal of the district; and, except in the case of a school district authorized to use another form of contract approved by the minister, shall be in Form 6 in the Schedule.

(2) Every board of trustees shall deliver to each of the teachers of the district within two weeks after engaging him, an agreement in writing in triplicate duly executed by the school district and the teacher shall immediately execute the agreement and return two copies thereof to the board.

(3) Where an agreement between a teacher and a board of trustees of a district or division is terminated by one of the parties thereto, and the other party, within seven days of receiving the notice that the agreement is terminated, requests the party terminating the agreement to give a reason for terminating the agreement, the party terminating the agreement shall, within seven days of receiving the request, give to the other party the reason for terminating the agreement; and, if the agreement has been in effect for more than two years and is terminated by the board of trustees of the district or division,

(a) the teacher, by notice in writing served on the board within seven days of the date the reason for terminating the agreement was given, may require that the matter of the termination of the agreement be submitted to an arbitration board composed of one representative appointed by the teacher and one representative appointed by the board, and a third person, who shall be chairman of the board of arbitration, mutually acceptable to, and chosen by, the two persons so appointed, none of whom shall be a member or employee of the board, and, if one of the parties to the agreement is a division, none of whom shall be a member or employee of the division or a district within the division;

(b) each party shall appoint its representative to the board of arbitration within ten days of the serving of the notice by the second party under clause (a);

(c) where the members of the arbitration board appointed by the parties cannot agree on a decision, the chairman shall make the decision, and his decision shall be deemed to be a decision of the arbitration board;

(d) the issue before the arbitration board shall be whether or not the reason given by the board for terminating the agreement constitutes cause for terminating the agreement;

(e) where, after the completion of hearings, the arbitration board finds that the reason given for terminating the agreement does not constitute cause for terminating the agreement, it shall direct that the agreement be continued in force and effect, and subject to appeal as provided in The Arbitration Act, the decision and direction of the arbitration board is binding upon the parties; and

(f) the arbitration board shall, within thirty days after its appointment, make its decision and shall immediately forward a copy thereof to each of the parties and to the minister.

(4) Each member of an arbitration board appointed under subsection (3), is entitled to receive the sum of fifteen dollars for each day on which he is engaged in investigating and deciding any matter referred to the arbitration board together with his actual travelling and living expenses; and the costs of the arbitration shall be paid by the parties concerned therein, on such basis as may be determined by the arbitration board, and the determination of the arbitration board in his respect is binding on the parties to the arbitration.

(10) Where complaint is made to the board of a district respecting the competency or character of a teacher, the board shall not terminate its agreement with the teacher unless it has communicated the complaint to him and given him an opportunity to appear before the board in person or by his representative and to answer the complaint.

385. Notwithstanding anything herein, any teacher may present his personal grievance to the trustees of his district or area at any time.

APPENDIX E

MANITOBA, FORM 6, SECTION 281

APPENDIX E

MANITOBA
FORM 6, SECTION 281

THIS AGREEMENT made in triplicate this _____ day of _____ A.D. 19 _____.

BETWEEN:

THE SCHOOL DISTRICT OF _____ NUMBER _____ (hereinafter called "the district")

OF THE FIRST PART

AND

______ of _____ (Home address) the holder of a Principal's/Regular Certificate Number _____ of a licence to teach in the Province of Manitoba, (hereinafter called "the teacher")

OF THE SECOND PART.

1. The district hereby engages the teacher, and the teacher hereby accepts engagement for service with the district, at the yearly salary of _____ dollars, such engagement to commence on the _____ day of _____ 19_____ and to be terminated in the manner hereinafter provided.

2. The district agrees that it will pay the said salary to the teacher in _____ equal consecutive monthly payments of _____ dollars each, on or before the last teaching day of each month beginning with the _____ day of _____, 19 _____, in each year during the continuance of this contract:

   Provided that if a salary schedule is in force in the district, the district shall pay the teacher at the rate prevailing from time to time in said schedule or any temporary modification of it.

3. If any salary is payable during July and August, it shall be paid on the last day of the month.

4. The teacher agrees with the district to teach diligently and faithfully and to conduct the work assigned by and under the authority of the said district during the period of this engagement, according to the law and regulations in that behalf in effect in the Province of Manitoba, and to perform such duties and to teach such subjects as may from time to time be assigned in accordance with the statutes and the regulations of The Department of Education in the said Province.

5. This agreement is subject to the following conditions:

   a) The teacher shall not be required to teach on holidays and vacations prescribed by the law and regulations.

b) The days on which the teacher has attended the meetings convened by the inspector of the district (which attendance shall, if required, be evidenced by the certificate of the said inspector), shall be allowed him or her as if he or she had actually taught for the district during those days.

c) In case of sickness, the teacher shall be entitled to receive his or her salary without deduction for such period as may be authorized under the statutes in that behalf.

6. This agreement shall be deemed to continue in force, and to be renewed from year to year, with such variations as to the time of payment and the amount of salary as may be provided by the by-laws, resolutions, or schedules, of the district from time to time in force (of which variations the teacher must be notified forthwith, and concerning which he or she shall have the right of conference with the board of trustees of the district), unless and until terminated by one of the following methods: Provided that no variation of salary shall take place before October 1st, unless notice be given the teacher on or before the 30th day of June of the same year:

a) By mutual consent of the teacher and the district.

b) By written notice given at least one month prior to the 31st of December or the 30th of June, terminating the contract on the 31st of December or the 30th of June, as the case may be but the party giving notice of termination shall, on request, give to the other party the reason or reasons for terminating this agreement.

c) By one month's previous notice in writing given by either party to the other in case of an emergency affecting the welfare of the district or of the teacher: Provided that in that event the district may, in lieu of one month's notice as aforesaid, pay the teacher one month's salary at the said rate.

d) By one month's notice in writing by the teacher in case of variation of salary, which notice shall be given, at the discretion of the teacher, at any time after notification of the variation, and shall take effect one month after the date it is given. Am. S.M., 1956, c. 54, s. 31.

7. Sections 147 and 283 of The Public Schools Act and Sections 24 to 29 of The Education Department Act shall form part of this agreement.

8. If this agreement is terminated by notice as provided in clause 6 hereof, the final payment shall be so adjusted that the teacher shall receive, for the part of the year taught, such fraction of the salary for the whole year as the number of days taught is of two hundred days.

As witness the corporate seal of the district attested by the signature of its chairman and secretary, in virtue of a resolution or by-law passed by the board of trustees of the district at a meeting held on the _____ day of _____, 19_____, and the hand and seal of the teacher on the day and year first above mentioned.

Chairman	Teacher
	(SEAL)
Secretary	Witness
(SEAL)	
	Teacher's address in district

To be executed in triplicate, one copy to be retained by the district, another by the teacher, and the third to be forwarded by the secretary-treasurer to The Department of Education.

APPENDIX F

NEW BRUNSWICK SCHOOLS ACT 1973

APPENDIX F

NEW BRUNSWICK SCHOOLS ACT 1973

41. Any contract for the employment of a teacher, to which this Act extends, shall continue in force from school year to school year and, unless terminated by mutual consent or by dismissal for cause, may be terminated only at the end of a school year by notice in writing delivered by one party thereto to the other before May 1, or mailed postage prepaid and registered to the other party and post-marked not later than the last day of April, of the school year at the end of which such termination is to take effect. 1968, c. 52, s. 6.

47. (1) Where a teacher has been employed as a teacher by a school board for less than three consecutive years a school board

a) may dismiss that teacher at the end of the school year by giving notice in writing to the teacher before May 1 in the year of dismissal, or

b) may dismiss that teacher for cause at any time by giving the notice of dismissal provided for in subsection (3).

(2) Subject to subsection (3), where a teacher has been employed as a teacher by a school board for three consecutive years or more, the school board shall not dismiss that teacher.

(3) If

a) a school board gives a notice of dismissal by registered mail to a teacher, setting out

(i) the termination date,
(ii) the cause of dismissal, and
(iii) such other matters as the board deems relevant; and

b) the dismissal is for cause;

the school board may dismiss that teacher.

(4) If within fifteen days of receiving the notice referred to in subsection (3), the teacher sends a notice of appeal by registered mail to the school board setting out the name and address of the nominee of the teacher, that teacher may appeal to a board of reference.

(5) The board of reference shall consist of

a) a nominee of the teacher,
b) a nominee of the board, and
c) a chairman to be appointed by the two nominees.

(6) The reference shall be conducted in accordance with the regulations.

(7) The decision of the board of reference is final. 1966, c. 24, s. 36.,

48. A board of reference constituted in accordance with section 10 or section 47 has, in relation to the hearing or determination of any matter that the board of reference may hear or determine, all of the powers and privileges that commissioners have under the Inquiries Act. 1971, c. 62, s. 6.

49. Notwithstanding subsection 47(2) every teacher shall be retired from his position at the end of the school year following the month in which he attained the age of sixty-five years; but the school board may, in its absolute discretion, retain in its employ any teacher who is due for retirement under this section on a year to year basis. 1971, c. 62, s.6.

50. Notwithstanding any contract of employment or provision of this Act where the number of teachers required in a school district is lessened, if the school board of that district gives notice in writing to a teacher before May 1 in the year in which the teacher is to be dismissed, the school board may dismiss that teacher at the end of the school year. 1966, c. 24, s. 37; 1969, 3. 71, s.7.

56. The terms and conditions of a teacher's contract of employment are

a) the terms and conditions of employment of a teacher set out in this Act except where and in so far as altered by a collective agreement negotiated under the Public Service Labour Relations Act and agreed between the Province of New Brunswick as represented by Treasury Board and an organization representing the teachers and in full force and effect; and where any term or condition of employment of a teacher set out in this Act has been altered by such a collective agreement, the term or condition set out in that agreement applies in so far as it alters the term or condition set out in this Act; and

b) any other term or condition of employment of a teacher set out in a collective agreement negotiated under the Public Service Labour Relations Act and agreed between the Province of New Brunswick as represented by Treasury Board and an organization representing the teachers and in full force and effect.

APPENDIX G

AGREEMENT BETWEEN THE NEW BRUNSWICK TEACHERS' FEDERATION AND TREASURY BOARD
January 1, 1977 to December 31, 1978

APPENDIX G

AGREEMENT BETWEEN THE NEW BRUNSWICK TEACHERS' FEDERATION AND TREASURY BOARD
January 1, 1977 to December 31, 1978

12.01 Where any provision of this Agreement conflicts with the provisions of any Public Statute or Regulation of the Province, the latter shall prevail and shall be deemed to form part of this Agreement, notwithstanding which in cases of direct conflict between provisions of the Schools Act and Regulations and any Clause of this Collective Agreement, the latter shall prevail.

12.02 In the event that any law passed by the Legislature of the Province and applying to teachers covered by this Collective Agreement renders null and void any provision contained herein, the remaining provisions shall remain in effect for the term of the Agreement and the parties agree to negotiate a mutually acceptable substitution therefor. On failure to reach agreement on any such substitution within thirty (30) days after notice to bargain has been given, either party may resort to the conciliation procedures under the Public Service Labour Relations Act and, where there is mutual agreement, to arbitration under that Act.

12.03 Where any legislation results in greater rights or benefits than those contained in this Collective Agreement, such rights and benefits shall, on demand of the Federation, form part of this Agreement and shall automatically accrue to the benefit of teachers covered by this Agreement.

40.01 It shall be the responsibility of the Employer to ensure that the contract entered into between a teacher and a Board of School Trustees shall be identical to that annexed to and forming part of this Collective Agreement as Schedule B, Schedule C or Schedule D, whichever is appropriate.

40.02 When a teacher is hired by a Board of School Trustees, he/she shall be advised by letter of the community in the School District in which he/she will be teaching and where possible, the school in which he/she will be teaching, the level(s) and if appropriate, the subject area.

42.01 The probationary period for teachers who enter into a contract with a Board of School Trustees to teach after the date of signing of this Agreement shall be for three consecutive years with the same Board.

42.02 A teacher who successfully completes his/her probationary period and then continues his/her employment with the same Board of School Trustees for the ensuing school year shall have a continuing contract as a teacher with the Board of School Trustees.

42.03 A teacher who has a continuing contract with a Board of School Trustees and who subsequently terminates his/her employment with that Board of School Trustees may, if reemployed by the same Board of School Trustees, have his/her probationary period waived or reduced.

42.04 A teacher who completes his/her probationary period or who has a continuing contract and who then commences employment with a different Board of School Trustees may have his/her probationary period waived or reduced.

52.01 No teacher shall be disciplined, suspended, dismissed or assessed a financial penalty except for just cause.

52.02 In all instances of disciplinary action other than dismissal and with the sole exception of cases of extreme urgency, the Board of School Trustees or its delegated representative (other than a member of the bargaining unit) shall give notice in writing by registered mail or personal service to the teacher involved at least forty-eight (48) hours prior to such disciplinary action. When, in cases of extreme urgency, oral notice of disciplinary action is given, it must be confirmed in writing by registered mail or personal service within forty-eight (48) hours. Said written notice of disciplinary action must include the precise reasons for said action.

52.03 In cases of dismissal, the Board of School Trustees or its delegated representative (other than a member of the bargaining unit) shall send a written notice by registered mail to the teacher involved at least ten (10) teaching days before dismissal. Said notice must contain the precise reasons for the dismissal and no reasons other than those recorded in the teacher's personal record file may subsequently be advanced against that teacher. The Board may, pending finalization of the dismissal, suspend the teacher involved with or without pay. The Board shall, upon request of said teacher in writing, forthwith arrange a meeting with him/her and representatives from the local Branch of the Federation to be held prior to the final decision of the Board, in order to afford the teacher and his/her representative an opportunity to make the appropriate representation to the Board. Said meeting shall be held in camera if requested by either party. The written decision of the Board shall be forwarded immediately to the teacher with a copy to the Branch and the Federation.

52.04 Where it is determined that a teacher has been disciplined, suspended, dismissed or assessed a financial penalty without just cause, he/she shall be reinstated in his/her former teaching position without loss of any benefit which would have accrued to him/her if he/she had not been disciplined, suspended, dismissed or assessed a financial penalty. In the event that any teacher suffers loss or reduction of any benefit, restitution shall be made no later than the end of the next complete pay period following the redress obtained.

52.05 Each teacher shall have a personal record file to which he/she shall, during the normal business hours of the Board of School Trustees and/or District Superintendent involved, have access, upon request, at a mutually agreeable time. No unfavourable note, report or letter shall be filed in the teacher's personal record file prior to the teacher's being notified in writing and having access to said note, report or letter. If the teacher considers that said note, report or letter is not justified, he/she may use the grievance procedures under this Agreement in order to seek to have it withdrawn from his/her record or corrected. Unfavourable notes, reports or letters pertaining to situations, incidents or conditions which can be corrected by the teacher and have been corrected by the teacher shall be removed from the teacher's personal record file within a reasonable period of time.

52.06 In cases of discipline, suspension, dismissal or financial penalties under this Article, only those unfavourable notes, reports or letters in the teacher's personal record file may be used against the teacher.

52.07 For the purpose of this application of Clause 52.05, the Board of School Trustees reserves the right to keep confidentially out of the record, the reference letter(s) that come into the possession of the Board on the occasion of the hiring of a teacher. In this event, the reference letter(s) shall not subsequently be used to the detriment of the teacher.

53.01 A Board of School Trustees may terminate for just cause the contract of a teacher with a continuing contract or of a probationary teacher. In all such instances, it shall do so by written notice by registered mail or personal service to that teacher on or before the 30th day of April preceding the end of the school year. Said notice shall contain the precise reasons for terminating the contract and from thereon no reasons other than those recorded in the teacher's personal record file may be invoked against the teacher.

53.02 Notwithstanding Clause 53.01, when a Board of School Trustees terminates the contract of a probationary teacher for reasons of incompetency, it shall do so by written notice by registered mail or personal service to the teacher on or before the 30th day of April preceding the end of the school year, and such notice shall state that the reason for terminating the contract is incompetency. Termination for reason of incompetency shall be without recourse to the grievance and adjudication provisions of this Agreement provided the termination has been preceded by a review with the teacher by his/her superior(s) (other than members of his/her bargaining unit) of his/her personal record file containing evaluation reports which substantiate incompetency and which were prepared by his/her Superintendent, or Assistant Superintendent, or Principal(s), or Vice-Principal(s), or Department Head(s), or Subject Coordinator(s).

53.03 Whenever it has been determined that the contract of a teacher was improperly terminated under this Article, he/she shall be reinstated without loss of any benefit that would have accrued to him/her and his/her contract not been terminated.

55.01 The parties agree that a grievance means a dispute or difference of opinion concerning any of the following:

a) the interpretation or alleged violation of any Clause in this Agreement or of any arbitral award;

b) disciplinary action resulting in dismissal or termination of contract, suspension or a financial penalty;

c) the interpretation or application of a provision in a statute, regulation, by-law, direction or other instrument made or issued by the Employer and dealing with terms and conditions of employment of teachers;

d) any occurrence or matter affecting terms and conditions of employment of teachers other than those terms and conditions of employment covered in the three preceding paragraphs and for which there is no administrative procedure for redress provided for in or under an Act of the Legislative Assembly.

55.02 The following may lodge a grievance:

a) An individual teacher on his/her own behalf or on behalf of himself/herself and one or more other teachers. In the latter case, the other teachers shall affix their signatures to the written grievance;

b) The Federation (subject to Clause 55.08);

c) The Employer (subject to Clause 55.08).

55.03 Grievance shall be processed in the manner hereinafter set forth.

55.04 In all cases of grievance arising out of paragraphs (a), (b), (c) and (d) of Clause 55.01, and which fall within the jurisdiction of Boards of School Trustees, the following procedure shall be followed:

Step One: A teacher or group of teachers shall, through the appropriate representatives of the NBTF Branch in the School District in which he/she or they teach, within thirty (30) teaching days of the effective knowledge of a decision by a Board of School Trustees or of the facts which give rise to the alleged grievance, present said grievance in writing, according to a form annexed to this Agreement as Schedule A, to the District Superintendent who shall then arrange to hold a meeting with the representatives of the Local Branch of the Federation within the next ten (10) teaching days and at a time which is agreeable to both parties. The Superintendent shall, within five (5) teaching days of said meeting, forward his/her written answer to the aggrieved teacher or group of teachers with copies to the Branch and the Federation.

Step Two: If the answer in Step One is not accepted, the Local Branch of the Federation shall, within twenty (20) teaching days, deposit said grievance with the Secretary of the appropriate Board of School Trustees who shall forthwith arrange a meeting with the representatives of the Local Branch of the Federation within the next ten (10) teaching days and at a time which is agreeable to both parties. Within ten (10) teaching days of that meeting, the Board shall render a written decision and forward it to the Branch involved with copies thereof to the aggrieved teacher or group of teachers and the Federation. For these cases, the Board shall constitute the final level of the grievance process.

55.05 In the cases processed under Clause 55.04, the Federation may have observers even when it is not involved in said grievances and the aggrieved teacher(s) shall have the right to attend the hearing.

56.01 Where a teacher has presented a grievance up to and including the final level in the grievance process and his/her grievance has not been dealth with to his/her satisfaction he/she may, subject to Clause 56.02, refer the grievance to adjudication within twenty (20) teaching days of receipt of the written answer to the grievance of Step Two of Clause 55.04 or 55.06.

56.02 A teacher is not entitled to refer a grievance to adjudication unless the Federation signifies in the prescribed manner:

a) its approval of the reference of the grievance to adjudication; and

b) its willingness to represent the teacher in the adjudication proceedings.

56.03

a) No grievance shall be referred to adjudication and no Adjudicator or Board of Adjudication shall hear or render a decision on a grievance until all procedures established for the presenting of the grievance up to and including the final level in the grievance process have been complied with.

b) No Adjudicator or Board of Adjudication shall, in respect of any grievance render any decision thereon, the effect of which would be to require the amendment of this Collective Agreement or an arbitral award.

56.04

a) Where a grievance is referred to Adjudication, the Adjudicator or Board of Adjudication shall give both parties to the grievance an opportunity of being heard.

b) After considering the grievance, the Adjudicator or Board of Adjudication shall:

(i) render a decision thereon,

(ii) send a copy thereof to each party, their representatives and to the Federation, and

(iii) shall deposit a copy of the decision with the Chairman of the Public Service Labour Relations Board.

c) In the case of a Board of Adjudication, a decision of the majority of the members on a grievance is a decision of the Board thereon, and the decision shall be signed by the Chairman of the Board.

d) Where a decision on any grievance referred to adjudication requires any action by or on the part of the Employer, the Employer shall take such action.

e) Where a decision on any grievance requires any action by or on the part of the teacher, the Federation or both, as the case may be, shall take such action.

f) The Public Service Labour Relations Board may, in accordance with Section 19 of the Public Service Labour Relations Act take such action as is stipulated therein to give effect to the decision of an Adjudicator or Board of Adjudication on a grievance but shall not inquire into the basis or substance of the decision.

56.05 The Employer agrees that where suspension or cancellation of a license or permit to teach results in recourse to adjudication, and whenever so requested by the teacher involved, it shall be referred to a Board of Adjudication.

APPENDIX H

AGREEMENT BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND THE FEDERATION OF SCHOOL BOARDS OF NEWFOUNDLAND AND THE NEWFOUNDLAND TEACHERS' ASSOCIATION (1977)

APPENDIX H

AGREEMENT BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND THE FEDERATION OF SCHOOL BOARDS OF NEWFOUNDLAND AND THE NEWFOUNDLAND TEACHERS' ASSOCIATION (1977)

12.01 A contract of employment made between a School Board and a teacher may only be terminated:

a) by giving three (3) months' notice in writing by the School Board (or pay in lieu of notice) if the contract is to be terminated during the school year and two (2) months' notice in writing (or pay in lieu of notice), if it is to be terminated at the end of the school year, provided an adequate reason for termination is stated by the School Board in writing, and the contract is a continuous one;

b) by giving three (3) months' notice in writing by the School Board (or pay in lieu of notice), if the contract is to be terminated during the school year and two (2) months' notice in writing (or pay in lieu of notice), if it is to be terminated at the end of the school year and the contract is a probationary one. When a School Board terminates the contract of a teacher who is on a probationary contract, the teacher shall be given opportunity to discuss the reason with the Superintendent. Termination of the contract of a teacher who is on a probationary contract under this paragraph (b) shall not be subject to the grievance and arbitration procedures. However a probationary teacher shall have the right to grieve as to whether or not the appropriate notice (or pay in lieu of notice) was given;

c) with thirty (30) calendar days notice in writing by the School Board (or pay in lieu of notice), when the teacher is incompetent;

d) without notice, by the School Board, when the certificate of grade or licence of the teacher has been suspended, cancelled, or is no longer recognized under the regulations;

e) without notice, by the School Board, where there is gross misconduct, insubordination or neglect of duty on the part of the teacher, or any similar just cause;

f) without notice, by the School Board, when the teacher refuses to undergo a medical examination in accordance with the provisions of paragraph (f) of Section 13 of the Schools Act, R.S.N. 1970.

12.02 A continuous or probationary contract of employment made between a teacher and a School Board may be terminated by the teacher by giving three (3) months' notice in writing to the School Board if the contract is to be terminated during the school year and two (2) months' notice in writing if it is to be terminated at the end of the school year.

12.03 Notwithstanding Clauses 12.01 and 12.02, the parties to this Agreement recognize that any contract may be terminated at any time by mutual agreement of the teacher and the School Board.

31.01 A teacher may file a grievance against his School Board or the Department of Education in the manner prescribed herein on his own behalf or on behalf of himself and one or more teachers.

31.02 A teacher or group of teachers who have a grievance over a matter which is within the scope of authority of a School Board shall submit the grievance in writing to the Superintendent within ten (10) calendar days of the occurrence or discovery of the incident giving rise to the grievance stating the precise nature of the grievance and the Article and Clause of the Agreement over which the grievance arises.

31.03 Where a grievance has been filed in accordance with 31.02, the Superintendent accompanied by such other School Board representatives as may be deemed necessary, shall, within ten (10) calendar days after receipt of the grievance, meet with the aggrieved teacher or group of teachers to endeavour to resolve the grievance. The teacher or group of teachers may be accompanied at this meeting by a representative of the Association or a local branch thereof.

31.04 The Superintendent shall within five (5) calendar days after the meeting referred to in 31.03, transmit in writing his decision on the grievance to the aggrieved teacher or group of teachers. In all grievances the Superintendent shall forward a copy of his reply to the Association.

31.05 If the decision of the Superintendent does not result in settlement of the grievance, the teacher or group of teachers may submit the grievance in writing to the Chairman of the School Board within ten (10) calendar days of receipt of the decision under 31.04.

31.06 The Chairman of the School Board shall within ten (10) calendar days of receipt of the grievance under 31.05, transmit in writing his decision to the aggrieved teacher or group of teachers. In all grievances the Chairman shall forward a copy of his reply to the Association.

31.07 If the decision of the Chairman of the School Board does not result in settlement of the grievance, the teacher or group of teachers may, with the written consent of the Association, submit the grievance to arbitration in accordance with the procedures set forth under Article 32.

32.01 Where a grievance has not been settled under the grievance procedure, or where there is a dispute as to whether the matter is arbitrable:

a) the teacher with the written consent of the Association; or

b) in the case of a grievance arising in accordance with Clause 31.20, the Association or the Employer, as the case may be, may within seven (7) calendar days after exhausting the grievance procedure, notify the other party in writing of the desire to submit the grievance to arbitration and the notice shall contain the name of the person appointed to be an arbitrator by the party giving notice. For the purpose of a referral to arbitration by either the Association or the Employer, the grievance procedure will be deemed to be exhausted when either party so notifies the other in writing either by personal service or by registered mail.

32.02 The party to whom notice is given under 32.01, shall within seven (7) calendar days after receipt of such notice, appoint an arbitrator and notify the other party of the name of the arbitrator.

32.03 The two (2) arbitrators appointed in accordance with 32.01 and 32.02, shall within ten (10) calendar days after the appointment of the second of them, appoint a third arbitrator agreeable to both parties and these three (3) arbitrators shall constitute an arbitration board. The arbitrator appointed under this Clause shall be the Chairman of the Arbitration Board.

32.04 If,

a) the party to whom notice is given under 32.01, fails to appoint an arbitrator within the period specified in 32.02, the Minister of Manpower & Industrial Relations shall, on the request of either party, appoint an arbitrator on behalf of the party who failed to make the appointment and such arbitrator shall be deemed to be appointed by that party; or

b) the two (2) arbitrators appointed by the parties under 32.01 and 32.02 fail to appoint a third arbitrator within the period specified in 32.02, the Minister of Manpower & Industrial Relations shall, on the request of either party appoint a third arbitrator and these three arbitrators shall constitute an Arbitration Board. The arbitrator appointed under this paragraph (b) shall be Chairman of the Arbitration Board.

32.05 Both parties to a grievance shall be afforded the opportunity of presenting evidence and argument thereon and may employ counsel or any other person for this purpose.

32.06 If a party fails to attend or be represented without good cause at an arbitration hearing, the arbitration board may proceed as if the party were present or represented.

32.07 The Arbitration Board shall render its decision on the grievance within fifteen (15) calendar days of the date on which the board is fully constituted and the decision of the board shall be committed to writing and submitted to the parties concerned within a further ten (10) calendar days.

32.08 The decision of a majority of the members of a Board of Arbitration shall be the decision of the Board and if there is no majority, the decision of the Chairman shall govern.

32.09 All parties bound by this Agreement shall comply with these provisions for final settlement of a grievance and they shall comply with the decision of an arbitration board appointed in accordance with these provisions and do or, as the case may be, abstain from doing anything required by that decision.

32.10 Each party required by this Agreement to appoint an arbitrator shall pay the remuneration and expenses of that arbitrator or of the arbitrator deemed to have been appointed by that party under 32.04 and the parties shall pay equally the remuneration and expenses of the Chairman of the Arbitration Board.

32.11 The time limits set out in this Article may be extended at any time by mutual agreement in writing of both parties to the grievance.

32.12 In any case, including cases arising out of suspension, dismissal, or other discipline, or the loss of any remuneration, benefits or privilege, the Board of Arbitration shall have full power to direct payment of compensation, vary the penalty, or to direct reinstatement of a benefit or privilege, or to affirm the taking away of such benefit or privilege as the Board may determine appropriate to settle the issues between the parties, and may give retroactive effect to its decision.

APPENDIX I

AN ORDINANCE RESPECTING EDUCATION IN THE NORTHWEST TERRITORIES 1977

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AN ORDINANCE RESPECTING EDUCATION IN THE NORTHWEST TERRITORIES 1977

84. Subject to section 85, a contract of employment of a teacher to which this Ordinance applies continues in force from academic year to academic year and, unless terminated by mutual consent, by dismissal for cause or dismissal for incompetence, may be terminated only at the end of an academic year by notice in writing delivered by one party to the other or sent by registered mail at least thirty days before the day set as the closing day of school for the education district in which the teacher is employed, or on the 30th day of April, whichever date first occurs.

85. (1) A teacher may be dismissed for cause or for incompetence at any time in the manner prescribed by regulation.

(2) Where a teacher has been employed as a teacher for less than two consecutive years, the employer of the teacher may terminate the contract of that teacher in accordance with section 84.

(3) Where a teacher has been employed as a teacher by one employer for two consecutive years or more, that employer shall not terminate the contract of that teacher except for cause or incompetence.

(4) Notwithstanding any contract of employment or provision of this Ordinance, where the number of teachers required in an education district is decreased, the employer may terminate the contract of any teacher by giving notice in writing as required by section 84.

(5) The Director shall attempt to locate a teaching position for a teacher whose contract is terminated under subsection (4).

(6) Where a teacher is dismissed or his contract is terminated, the employer shall give the teacher written reason for the dismissal or termination.

86. (1) Where, in the opinion of a Superintendent, there may exist grounds for the dismissal of a teacher, the Superintendent

a) may suspend that teacher from his position while an investigation is carried out, and

b) shall forthwith notify the Executive Member and the local education authority of the suspension.

(2) Within ten days after a teacher has been suspended under subsection (1), the employer shall

a) dismiss the teacher, or

b) cancel the suspension and reinstate the teacher.

(3) Where a teacher has been suspended under this section, the employer shall continue to pay the teacher's salary for the period of the suspension.

87. (1) A teacher who is dismissed for cause or for incompetence may in the manner and within the time prescribed by regulation appeal the dismissal to a board of reference.

(2) A board of reference shall consist of

a) a nominee of the teacher;

b) a nominee of the employer; and

c) a chairman to be appointed by the two nominees.

(3) The members of a board of reference shall be paid an honorarium and expenses as prescribed by the regulations.

(4) The chairman of a board of reference may secure the clerical or secretarial assistance necessary for the proper conduct and recording of the hearing.

(5) A board of reference may make orders as to costs in respect of appeals before the board.

88. (1) A board of reference shall conduct its hearings in accordance with the regulations and may

a) compel the attendance of witnesses and require that evidence be given on oath;

b) compel the production of books, documents and papers;

c) do all things necessary to provide a full and proper investigation into any matter before it.

(2) Any person served in accordance with the regulations with a notice to attend before a board of reference who

a) fails, without valid excuse, to attend the hearing,

b) fails to produce any book, paper or document in his possession or under his control when required to produce it under subsection (1), or

c) refuses to answer any proper questions put to him by the board of reference,

is guilty of an offence punishable on summary conviction.

89. (1) Where a board of reference hears a teacher's appeal from dismissal, the board shall

a) uphold the dismissal of the teacher; or

b) grant the appeal and order the employer to reinstate the teacher to his position;

and the board of reference may include in its order instructions to the employer in respect of the teacher's record, salary and such other matters as it feels just and fair in the circumstances.

(2) The decision of the board of reference under subsection (1) is final.

APPENDIX J

REGULATIONS FOR AN ORDINANCE RESPECTING EDUCATION IN THE NORTHWEST TERRITORIES 1977

APPENDIX J

REGULATIONS FOR AN ORDINANCE RESPECTING EDUCATION IN THE NORTHWEST TERRITORIES 1977

13. (1) Where a teacher is dismissed he may, within twenty (20) days after receipt of the notice of dismissal, appeal in writing to the Executive Member and the appeal shall be accompanied by the written consent of a nominee of the teacher to act as a member of a Board of Reference.

(2) A teacher shall, in writing, notify his employer of his intention to appeal under subsection (1).

14. (1) The Executive Member shall, upon receipt of a notice of appeal under subsection 13(1), forthwith notify the employer.

(2) The employer shall, within five (5) days after receipt of a notification from the Executive Member:

a) submit to the Executive Member the name of its nominee together with a written consent of the nominee to act on a Board of Reference; and

b) notify the employee of its nominee.

15. (1) The nominees of the teacher and the employer shall within ten (10) days appoint a chairman of the Board of Reference and notify the Executive Member together with the written consent of the appointee to act.

(2) Where the nominee fails to appoint a chairman in accordance with subsection (1), the Executive Member may appoint a chairman.

16. The chairman of the Board of Reference shall, within five (5) days after his appointment, fix a time and a place for a hearing which shall be held not later than twenty-five (25) days after the day of his appointment.

17. Where either nominee or the chairman is incapable or refuses to act, the party by whom he was nominated or appointed may nominate or appoint another person in his stead.

18. The Rules of Court apply insofar as they are applicable to hearings of a Board of Reference.

19. (1) The Board of Reference shall conduct every hearing in accordance with the principles of natural justice but the Board is not bound by the laws of evidence applicable to judicial proceedings.

(2) The notice set out in Form A of the Appendix shall be used for the purpose of summoning persons to attend before a hearing of a Board of Reference.

APPENDIX K

AGREEMENT BETWEEN YELLOWKNIFE EDUCATION DISTRICT NO. 1 AND THE N.W.T.T.A. 1978-80

APPENDIX K

AGREEMENT BETWEEN YELLOWKNIFE EDUCATION DISTRICT NO. 1 AND THE N.W.T.T.A. 1978-80

16.1 The first two years of employment of every teacher shall be on a probationary basis.

16.1.1 A probationary teacher may be dismissed only after the following procedures have been carried out:

a) The teacher has received an unsatisfactory teaching report from the Superintendent prior to December 1, clearly stating why the unsatisfactory report was issued;

b) Time and assistance have been given to the teacher to rectify the problem;

c) Should the teacher fail to rectify the problem indicated by a further unsatisfactory evaluation by the Superintendent and should a decision be made to terminate employment, notice of such termination must be given prior to March 31.

16.1.2 A teacher receiving such notice may request a meeting with the Board and the meeting shall be held within 30 days of receipt of request.

16.2 The Board may suspend a teacher for cause, or incompetence, as provided for in Section 86 of the N.W.T. Education Ordinance (R.O. 1977). Such suspension shall be with salary.

16.2.1 Notice of suspension shall be in writing and shall state the cause.

16.2.2 A teacher receiving a notice of suspension and who is subsequently reinstated, shall have his records restored to the condition in which they were prior to the notice of suspension.

16.3 The Board may dismiss a teacher for cause, or incompetence, as provided for in Section 85 (sub 1) of the N.W.T. School Ordinance (R.O. 1977).

16.3.1 Notice of dismissal shall be in writing, shall state the cause and the effective date of dismissal.

16.3.2 The effective date of dismissal shall not be less than thirty (30) calendar days from receipt by the teacher of the notice of dismissal.

16.3.3 Where a teacher is dismissed he shall have access to a Board of Reference as provided in Regulations 13 to 19 inclusive of the Regulations for an Ordinance Respecting Education in the Northwest Territories dated August 23, 1977 and reprinted here as Appendix D.

16.4.1 Notification under Regulation 13(1) and any subsequent correspondence shall be in writing to the Secretary Treasurer of the Board who shall copy same to the N.W.T.T.A.

APPENDIX L

COLLECTIVE AGREEMENT BETWEEN YELLOWKNIFE SEPARATE EDUCATION DISTRICT NO. 2 AND THE N.W.T.T.A. 1979

APPENDIX L

COLLECTIVE AGREEMENT BETWEEN YELLOWKNIFE SEPARATE EDUCATION DISTRICT NO. 2 AND THE N.W.T.T.A. 1979

9.01 During the first two years of a teacher's employment the Board may, at its discretion notify that teacher that he/she will not be employed for the school year immediately following after consultation with the Superintendent and Principal; provided that the teacher has received one written Superintendent's report prior to the end of the first semester. If this report is negative the Board agrees to make available all reasonable assistance from the Board and its officers to rectify any problem area that may be revealed in the Superintendent's reports. Further to this a second written Superintendent's report shall be given to the teacher prior to March 31st. The Board will attempt to give all probationary teachers two written reports per annum.

Notice to non-renewal of contract together with reasons shall be delivered to the teacher in writing not later than thirty (30) days prior to resignation date.

Any teacher receiving such notice may request a meeting with the Board in Committee to discuss the reasons for giving the teacher notice. Where such a meeting is requested it shall be held within thirty (30) days of the request being received by the Board.

9.02 Notwithstanding 9.01 the Board may at any time place a probationary teacher on permanent employment status, prior to the end of his/her first two years of employment.

9.03 The employment of any teacher who has been employed for two consecutive years or more may only be terminated by:

(1) Resignation of the teacher.

(2) Retirement in accordance with the Board Policy.

(3) Dismissal in accordance with the provisions of the Education Ordinance, the Regulations attached thereto and the procedures set out hereunder.

(4) Mutual agreement.

9.04 Resignation--End of Year

(1) Any teacher intending to resign at the end of the school year shall notify the Board in writing of their intention on or before April 30th of that school year.

(2) Failure to notify the Board of intention to resign will constitute acceptance of employment with the Board during the school year immediately following.

9.05 Resignation--During Year

(1) Any teacher's position may be terminated at any time by mutual consent of the teacher and the Board.

9.06 Dismissal in this section refers to termination of any teacher's employment during the school year, or at the end of any school year beyond the second consecutive year of employment, in accordance with the provisions of Section 85 of the 1977 Education Ordinance of the Northwest Territories. Dismissal shall be by any notice in writing, stating the reasons for the dismissal. Any teacher receiving notice of the dismissal may within ten (10) days of such notice appeal the dismissal to a Board of Reference.

(1) The Board of Reference shall consist of a member appointed by the Board of Trustees, a member appointed by the N.W.T.T.A. and a Chairman appointed by the first two. Failing to agree on a Chairman the Commissioner of the N.W.T. shall be requested to appoint a Chairman.

(2) The Board of Reference shall hold a hearing in camera within thirty (30) days to determine the validity of the grounds for dismissal. An extension to thirty (30) days may be granted by mutual consent.

(3) Upon completion of the hearing, and in any case prior to the effective date of dismissal, the Board of Reference shall report its decision to the Board of Trustees and the teacher concerned.

(4) The decision of the Board of Reference shall be binding upon both parties.

9.07 Every teacher in the employ of the Board shall receive one written Superintendent's evaluation not later than April 1st of each year he/she is employed by the Board.

APPENDIX M

NOVA SCOTIA EDUCATION ACT, S.N.S. 1972

APPENDIX M

NOVA SCOTIA EDUCATION ACT, S.N.S. 1972

76 (4) The school board may, at any time for just cause, by notice in writing, discharge any teacher in its employ.

(5) The employer may

a) by notice in writing given to the teacher not later than the thirtieth day of April, terminate a probationary contract at the end of the first or second year; or

b) by notice in writing given to the teacher not later than the thirtieth day of April, terminate a permanent contract at the end of the school year for

(i) just cause, or

(ii) if, in the system under the jurisdiction of the employer, the estimated enrolment of courses the teacher is qualified and willing to teach is insufficient to justify the employment of the teacher.

(6) An employer shall not discharge a teacher pursuant to subsection (4), or terminate a permanent contract pursuant to subclauses (i) or (ii) of clause (b) of subsection (5) until

a) the employer has given the teacher written notice of the complaint against him upon which the discharge or termination of contract is based; and

b) an opportunity has been given the teacher by the employer to appear before the employer in person or by counsel to make answers to the matters in the complaint; and

c) where the employer is a school board, the discharge or termination of contract is approved by a resolution passed by a majority of the members of the board who vote at a duly called meeting at which at least eighty percent of the members are in attendance; or

d) where the employer is the Minister, the discharge or termination of contract is authorized by the Minister.

(6A) The employer may at any time prior to the constitution of a board of appeal pursuant to subsection (7) vary or revoke the discharge or termination of contract of the teacher, and when the discharge or termination is revoked, it shall be deemed not to have taken place.

(7) A teacher who is suspended or discharged, or whose permanent contract is terminated, may appeal the suspension or discharge or termination by giving written notice of appeal to the employer and the Minister within twenty days of any confirmation or variation of the suspension or discharge or termination of contract.

(8) When a notice of appeal is given pursuant to subsection (7), a board of appeal shall be constituted and shall be composed of one person appointed by the Minister.

(9) The board of appeal shall have the powers of a commissioner appointed under the Public Inquiries Act and shall inquire into the suspension, discharge or termination of a contract and shall, after hearing the teacher and the employer, make an order confirming, varying or revoking the suspension or discharge or confirming or revoking the termination of contract.

(10) An order made by a board of appeal shall be final and binding upon the teacher and the employer and a copy of the order and a copy of any decision, reasons or report shall be transmitted forthwith by the board to the teacher, the employer and the Minister of Education.

(11) Nothing in this Section shall prevent a board of appeal from attempting to effect a settlement of the differences between the teacher and the employer and the term of any settlement agreed upon by the teacher and the employer shall be final and binding.

(12) Nothing in this Section shall prevent a teacher from terminating a contract in accordance with the terms and conditions of the contract or in accordance with any method permitted by law.

(13) One half of the costs, expenses and fees of the board of appeal shall be paid by the teacher and the other half by the employer.

(14) Notwithstanding any other enactment or agreement, the costs of the board of appeal shall not be included in any calculation for the purpose of determining financial assistance to the board by the Province.

APPENDIX N

THE EDUCATION ACT, ONTARIO, 1974

APPENDIX N

THE EDUCATION ACT, ONTARIO, 1974

226. A board shall not offer to a teacher, and no teacher shall accept, a contract as a probationary teacher for a period greater than

a) two years where the teacher has less than 3 years experience, and

b) one year where the teacher has 3 or more years of experience.

232. In sections 233 to 242,

a) "contract" means a contract of employment between a teacher and a board;

b) "employed" means employed as a permanent teacher by a board;

c) "judge" means a judge of a county or district court;

d) "teacher" means a person qualified to teach in an elementary or secondary school and employed by a board on the terms and conditions contained in the form of contract prescribed for a permanent teacher.

233. (1) The dismissal of a teacher, or the termination of the contract of a teacher, by a board shall be by notice in writing, which shall state the reasons therefor, in accordance with the terms of the contract.

(2) Where a teacher is employed by a board, the termination of the contract by the teacher shall be by notice in writing in accordance with the terms of the contract.

(3) Where a teacher is dismissed or the contract of a teacher is terminated by the board or the teacher, the teacher or board if not in agreement with the dismissal or termination may at any time within twenty-one days after receiving the notice referred to in subsection 1 or 2, as the case may be, apply in writing by registered mail to the Minister for a Board of Reference, stating the disagreement.

(4) The applicant shall send a copy of the application by registered mail to the other party to the disagreement on the same day as the application is sent to the Minister.

234. (1) A Board shall not make a permanent appointment to take the place of a teacher who is dismissed or whose contract has been terminated in a manner not agreeable to the teacher until,

a) the time prescribed for applying for a Board of Reference has elapsed and the teacher has not applied for a Board of Reference and sent a copy of the application to the board, as provided in Section 233;

b) the board has received from the teacher notice in writing that no application will be made under section 233;

c) the board has received from the Minister notice in writing that an application made by the teacher under section 233 has been withdrawn;

d) the board has received from the Minister notice in writing that he has refused an application made by the teacher under section 233;

e) the board has received from the Minister notice in writing that the teacher, being the applicant, has failed to comply with the requirements of subsection 3 of section 235; or

f) the board has received from the Minister a copy of the direction of the Board of Reference under section 238 directing the discontinuance of the contract,

whichever first occurs.

(2) A teacher who terminates a contract in a manner not agreeable to the board shall not enter into a contract with another board after the teacher has received notice of the application of the board for a Board of Reference until,

a) the teacher has received from the Minister notice in writing that an application made by the board under section 233 has been withdrawn;

b) the teacher has received from the Minister a notice in writing that he has refused an application made by the board under section 233;

c) the teacher has received from the Minister notice in writing that the board, being the applicant, has failed to comply with the requirements of subsection 3 of section 235; or

d) the teacher has received from the Board of Reference a copy of the direction of the Board of Reference under section 238 directing the discontinuance of the contract,

whichever first occurs.

235. (1) Upon receipt of an application for a Board of Reference, the Minister shall cause notice of the application to be sent by registered mail to the other party to the disagreement and shall within thirty days of sending the notice inquire into the disagreement and shall, within the same time,

a) refuse to grant the Board of Reference; or

b) grant the Board of Reference and appoint a judge to act as chairman thereof.

(2) Where, under subsection 1, a judge is appointed after the expiry of thirty days referred to therein to act as chairman of a Board of Reference, the failure to make the appointment within the thirty-day period does not invalidate the Board of Reference, provided the Board of Reference is granted in accordance with subsection 1.

(3) Upon appointing a judge to act as chairman of a Board of Reference, the Minister shall cause notice thereof to be sent by registered mail to the board and teacher involved in the disagreement and the notice shall require each of them to name to the Board of Reference a representative who is not the teacher involved or a member of the board and to send or cause to be sent by hand or by registered mail to the Minister a notice of such nomination within twelve days of the sending of the notice by the Minister.

(4) If the applicant fails to comply with the requirements of subsection 3, the application shall be deemed to be abandoned and the Minister shall cause notice thereof to be sent by registered mail to the other party to the disagreement.

(5) If the respondent fails to comply with the requirements of subsection 3, the Minister shall direct the continuance of the contract.

(6) If the representative of the board or the teacher, having been named, fails to appear at the hearing, the chairman of the Board of Reference shall name a representative for the board or teacher, as the case may be.

(7) Where the Minister grants a Board of Reference, the applicant shall be deemed to have met the conditions precedent to the granting of a Board of Reference.

(8) Where, after the hearing has commenced, the representative of the board or of the teacher dies, for any reason is unable to continue to act or withdraws from the Board of Reference, the other representative shall withdraw and the decision of the Board of Reference shall be made by the chairman.

(9) Where, before the hearing has commenced, the chairman of a Board of Reference dies, disqualifies himself, for any reason is unable to act or is prohibited from acting, the Minister shall appoint another judge to act as chairman and the Board of Reference shall proceed in accordance with this Part except that for the purposes of section 236 the date of appointment of the chairman is the date of appointment of the chairman appointed to act under this section.

(10) Where, after the hearing has commenced and before the chairman of a Board of Reference reports to the Minister and to the parties,

a) the chairman dies, disqualifies himself, for any reason is unable to continue as chairman, or is prohibited from acting; or

b) the Board of Reference is prohibited from acting or proceeding,

the Board of Reference is terminated and, where, within ninety days after the death, disqualification, inability to continue or prohibition referred to in clause a or b, the person who applied for the Board of Reference requests the Minister in writing to grant another Board of Reference, the Minister may grant a new Board of Reference, in which case the provisions of this Part apply mutatis mutandis except that the representatives named to the new Board of Reference shall not be the representatives named to the Board of Reference terminated under this subsection and the determination and direction of the costs under section 241 may include the costs, if any, incurred in respect of the Board of Reference terminated under this subsection.

(11) Where a new Board of Reference is granted under subsection (10) the hearing shall proceed as if the hearing by the Board of Reference terminated under subsection 10 had not commenced.

236. The chairman of the Board of Reference shall, within thirty days of his appointment, and upon reasonable notice thereof to the parties, convene the Board of Reference in any appropriate and convenient court house or municipal or school building and at such time as he may appoint.

236. The Board of Reference shall inquire into the matter in dispute and for such purposes the chairman has the powers of a commission under Part II of The Public Inquiries Act, 1971, which Part applies to such inquiry as if it were an inquiry under that Act.

238. (1) A Board of Reference shall direct the continuance of the contract or the discontinuance of the contract.

(2) The chairman of a Board of Reference shall, within seven days after,

a) the application for the Board of Reference is withdrawn; or

b) the matter in dispute has been settled by the parties to the Board of Reference; or

c) the completion of the hearing and the receipt of any written submissions required by him,

report to the Minister and the parties the disposition of the application.

239. Where, pursuant to an application for judicial review under The Judicial Review Procedure Act, 1971, the report or the direction of a Board of Reference is set aside, the Minister may grant a new Board of Reference if the board or teacher applies therefor to the Minister by registered mail within fifteen days after the date of the order of the court setting aside the report or direction, and the provisions of sections 232 to 242 apply *mutatis mutandis* in respect of the new Board of Reference.

240. (1) The direction of the Board of Reference under section 238 is binding upon the board and the teacher.

(2) If a board fails to comply with the direction of the Board of Reference under section 238, the Minister may direct that any portion of the amounts then or thereafter payable to the board under the authority of any Act of the Legislature shall not be paid to the board until it has complied with the direction.

(3) If a teacher fails to comply with the direction of the Board of Reference under section 238, the Minister may suspend the certificate of qualification of the teacher for such period as he considers advisable.

241. Subject to the regulations made under section 242, the chairman of the Board of Reference shall determine and direct the costs to be paid by either or both parties in the disagreement, and every such order may be enforced in the same manner as an order as to costs made in an action in a county or district court.

242. The Lieutenant Governor in Council may make regulations,

a) fixing the remuneration of members of Boards of Reference and defining, prescribing and limiting other items of expense, including travelling and living expenses, which shall be included in the costs of a Board of Reference;

b) regulating the practice and procedure to be followed upon any reference; and

c) respecting any matter necessary or advisable to carry out effectively the intent and purpose of sections 233 to 241.

7.

APPENDIX O

PERMANENT TEACHER'S CONTRACT, ONTARIO

APPENDIX O

PERMANENT TEACHER'S CONTRACT, ONTARIO

This Agreement made in duplicate this _____ day of _____ 19 _____ between _____ hereinafter called the "Board" and _____ of the _____ of _____ County (or as the case may be) in the Territorial District of _____ hereinafter called the "Teacher".

1. The Board agrees to employ the Teacher as a permanent teacher and the Teacher agrees to teach for the Board commencing the _____ day of _____ 19_____ at a yearly salary of _____ Dollars, subject to any changes in salary mutually agreed upon by the Teacher, and the Board, payable in _____ payments, less any lawful deduction, in the following manner:

(i) Where there are ten payments, one-tenth on or before the last teaching day of each teaching month.

(ii) Where there are more than ten payments, at least one-twelfth on or before the last teaching day of each teaching month, any unpaid balance being payable on or before the last teaching day of June, or at the time of leaving the employ of the Board, whichever is the earlier.

2. This Agreement is subject to the Teacher's continuing to hold qualifications in accordance with the Acts and regulations administered by the Minister.

3. The Teacher agrees to be diligent and faithful in his duties during the period of his employment, and to perform such duties and teach such subjects as the Board may assign under the Acts and regulations administered by the Minister.

4. Where the Teacher attends an educational conference for which the school has been legally closed and his attendance thereat is certified by the supervisory officer concerned or by the chairman of the conference, the Board agrees to make no deductions from the Teacher's salary for his absence during that attendance.

5. Where an Act of Ontario or a regulation thereunder authorizes the Teacher to be absent from school without loss of pay, the Board agrees that no deduction from his pay will be made for the period of absence so authorized.

6. This Agreement may be terminated,

a) at any time by the mutual consent in writing of the Teacher and the Board; or

b) on the 31st day of December in any year of the Teacher's employment by either party giving written notice to the other on or before the last preceding 30th day of November; or

c) on the 31st day of August in any year of the Teacher's employment by either party giving written notice to the other on or before the last preceding 31st day of May.

7. The Teacher agrees with the Board that in the event of his entering into an agreement with another board he will within 48 hours notify the Board in writing of the termination of this Agreement unless the notice has already been given.

8. Where the Teacher is to be transferred by the Board from a school in one municipality to a school in another municipality, the Board agrees to notify the Teacher in writing on or before the 1st day of May immediately prior to the school year for which the transfer is effective, but nothing in this paragraph prevents the transfer of a teacher at any time by mutual consent of the Board and the Teacher.

9. This Agreement shall remain in force until terminated in accordance with any Act administered by the Minister or the regulations thereunder.

In witness whereof the Teacher has signed and the Board has affixed hereto its corporate seal attested by its proper officers in that behalf.

____
(Signature of Chairman of the Board)

____
(Signature of Secretary of the Board)

____
(Signature of Teacher)

APPENDIX P

PRINCE EDWARD ISLAND SCHOOL ACT 1974

APPENDIX P

PRINCE EDWARD ISLAND SCHOOL ACT 1974

42. Subject to section 43, any contract of employment of a teacher to which this Act extends is to continue in force from school year to school year and, unless terminated by mutual consent, by dismissal for cause or dismissal for unsatisfactory service, may be terminated only at the end of a school year by notice in writing delivered by one party to the other before the first day of May, or sent by registered mail no later than the last day of April of that year.

43. (1) Where the dismissal is for cause or for unsatisfactory service the regional school board may dismiss a teacher at any time.

(2) The dismissal under subsection (1) is to be done in the manner provided by regulation.

(3) Where a teacher has been employed as a teacher by a regional school board for three consecutive years or less and has not executed a fourth contract, a regional school board may terminate his current contract under section 42.

(4) Where a teacher has been employed as a teacher by a regional school board for three consecutive years and has executed a fourth contract, the regional school board shall not terminate the contract of that teacher except for cause or unsatisfactory service.

(5) A regional school board may in its discretion credit some or all of the time served by a teacher with another regional school board for the purpose of computing the time period referred to in subsection (4), but where it is deemed by the regional school board to be advisable to disregard the time served by the teacher with the other regional school board, it may do so.

(6) Where a dismissal is for cause or for unsatisfactory service, the teacher may appeal that dismissal in the same manner as an appeal under section 41 except that the second nominee is to be one of the regional school board rather than of the Minister.

(7) Notwithstanding any contract of employment or provision of this Act, where the number of teachers required in a regional administrative unit is lessened, if the regional school board of that unit gives notice in writing as in section 42, the regional school board may terminate the contract of any teacher.

APPENDIX Q

PRINCE EDWARD ISLAND SCHOOL ACT, REGULATIONS 1976

APPENDIX Q

PRINCE EDWARD ISLAND SCHOOL ACT, REGULATIONS 1976

1. A regional school board may suspend or dismiss a Teacher in its employ for cause or unsatisfactory service.

2. The Regional School Board may, pending finalization of its decision, suspend summarily the Teacher involved and such suspension shall not exceed a period of more than ten days.

3. The Regional School Board shall notify the Teacher by registered mail immediately setting forth the reason or reasons for the suspension.

4. The Regional School Board shall, upon request of the Teacher in writing, arrange a meeting with him and his representatives to be held within eight days of the receipt by the Teacher of the notice of suspension in order to afford the Teacher and his representatives an opportunity to make appropriate representation to the Regional School Board; the meeting shall be held "in camera" if requested by either party.

5. The final decision of the Regional School Board shall be forwarded in writing to the Teacher, to his representatives, to the regional superintendent and to the Minister of Education.

6. If the decision of the Regional School Board is to reinstate the Teacher, the Teacher shall be reinstated in his former position without loss of any benefit which would have accrued to him had he not been suspended.

7. If the decision of the Regional School Board is to extend the period of suspension, the final written decision of the Regional School Board, pursuant to section 5, shall constitute a "Notice of Suspension" and shall contain the effective date and duration of the suspension, which shall not exceed ninety days, and shall also contain the precise reason or reasons for the suspension and no additional reason or reasons may subsequently be advanced against the Teacher; the "Notice of Suspension" shall be forwarded immediately by registered mail to the Teacher.

8. If the decision of the Regional School Board is to dismiss the Teacher, the final written decision of the Regional School Board, pursuant to section 5, shall constitute a "Notice of Dismissal", and shall contain the effective date of dismissal and the notice shall contain the precise reason or reasons for the dismissal and no additional reason or reasons may subsequently be advanced against the Teacher; the "Notice of Dismissal" shall be forwarded immediately by registered mail to the Teacher.

9. Where a suspension or a dismissal is for cause or unsatisfactory service, the Teacher may, within thirty days after the effective date of suspension or dismissal, make a written request to the Minister by registered mail accompanied by a deposit of twenty-five dollars, to establish and the Minister, within ten days of receipt of the written application of the Teacher, shall establish a Board of Reference to consist of:

a) a nominee of the Teacher;

b) a nominee of the Regional School Board; and

c) a third member as chairman to be appointed by the two nominees.

10. Where the nominees within five days of their nomination cannot agree on a chairman, either nominee may apply in writing to the Minister to appoint a chairman, and the Minister shall make such appointment within five days.

11. Where a suspension or dismissal is for cause or unsatisfactory service, the Teacher may appeal in writing within five days of its establishment to the Board of Reference.

12. Not later than ten days after the Board of Reference has received the application for appeal, the Board of Reference shall proceed to hear the appeal referred to it by the Teacher.

13. The Board of Reference has the power:

a) to administer oaths; and

b) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath or on solemn affirmation, in the same manner as a court of record in civil cases.

14. The initial presentation to the Board of Reference by the Regional School Board or its representatives and the Teacher or his representatives shall be made with both parties present and with each having the opportunity for rebuttal.

15. Except where otherwise provided in these regulations, a Board of Reference may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

16. (1) The chairman of the Board of Reference shall, not later than five days prior to the date fixed for the purpose, give notice to all parties of the time and place of the appeal hearing.

(2) The chairman and one other member of the Board of Reference constitutes a quorum for the conduct of business by the Board of Reference, and in the case of the absence of any member from a meeting of the Board, the other two members shall not proceed unless satisfied that the third member has been notified of the meeting in ample time to allow him to attend.

(3) In case of the absence of any member due to illness or other reasonable cause, the other two members shall not proceed until he has returned or been replaced.

(4) The decision of the majority of the members present at the appeal hearing of the Board of Reference on questions of procedure, admissability of evidence and other matters which arise during the hearing shall be the decision of the Board of Reference, but lacking a majority decision on such matters the decision of the chairman governs.

(5) After making full inquiry and without undue delay which in no case shall exceed ten days the Board of Reference shall make its decision.

(6) Written copies of the final decision of the Board of Reference, duly signed by the chairman of the Board of Reference, shall be forwarded within forty-eight hours of the final decision of the Board to the Teacher, the Regional School Board and the Minister.

(7) Where the decision of the Board of Reference is to reinstate the Teacher, the Teacher shall be reinstated in his former position without loss of any benefit which would have accrued to him had he not been suspended or dismissed.

(8) Where the decision of the Board of Reference is to reinstate the Teacher, the deposit required under Section 9 shall be refunded to the Teacher.

(9) The decision of the Board of Reference is final and binding on both parties.

17. The members of the Board of Reference shall be paid such remuneration as the Minister of Education shall determine, the remuneration shall be paid out of the Consolidated Fund.

18. (1) In every appeal to the Board of Reference, the Teacher is liable for payment of all expenses incurred by him or his representatives in connection with the appeal.

(2) In every appeal to the Board of Reference, the Regional School Board against whom such appeal is invoked, is liable for payment of all expenses incurred by it or its representatives in connection with the appeal.

APPENDIX R

PRINCE EDWARD ISLAND TEACHERS' MEMORANDUM OF AGREEMENT (1977-79)

APPENDIX R

PRINCE EDWARD ISLAND TEACHERS' MEMORANDUM OF AGREEMENT (1977-79)

35.01 Before the contract of a teacher may be terminated by a Regional School Board under Section 43(7) of the School Act, every effort must be made to locate a position for which the said teacher is qualified.

35.02

a) A teacher whose contract is terminated under Section 43(7) of the School Act shall have his/her name placed on a teacher placement list by the Regional School Board.

b) The Regional School Board shall review the teacher placement list when filling any teacher vacancy which may become available with a view to offering the position to any teacher on the placement list who, in the opinion of the Regional School Board, can satisfactorily fill the position.

APPENDIX S

QUEBEC EDUCATION ACT 1964 (REVISED)

APPENDIX S

QUEBEC EDUCATION ACT 1964 (REVISED)

203. It shall be the duty of school boards:

(1) To engage teachers duly qualified to teach in the schools under their control, but they shall not engage as a teacher the consort of a member of the school board;

(2) After mature deliberation at a meeting called for that purpose, to cancel the engagements of persons holding pedagogical or educational positions on account of incapacity, negligence in the performance of their duties, insubordination, misconduct or immorality;

203a. Any person who holds a pedagogical or educational position and is dismissed under paragraph 2 of section 203 may submit his grievance to arbitration in accordance with the procedure prescribed in the collective agreement governing the parties or, failing such agreement or if it does not provide therefor, in accordance with sections 88 to 90 of the Labor Code.

The council of arbitration seized of the grievance shall determine whether the procedure prescribed for the dismissal has been followed and whether the reasons alleged by the school board in support of such dismissal constitute one of the causes of cancellation contemplated in paragraph 2 of section 203.

The council of arbitration may set aside the decision of the school board if the procedure prescribed has not been followed or, if the reasons for the dismissal are not well founded, order that the person concerned be reinstated in his duties and determine, if need be, the amount of the compensation to which he is entitled.

212. The engagement of a teacher shall be for a school year, or to complete a year already begun, or for more than one school year in special cases approved by the Minister.

218. No person may hold an engagement in a public school unless he produces, every year:

(1) A physician's certificate stating that he suffers from no infirmity or disease which renders him unfit for teaching;

(2) A certificate from a phtisiologist attesting that a clinical and radiological pulmonary examination shows that such person is free from tubercular disease.

Such examination must be made within two months following the engagement or appointment. In the case of re-engagement, the radiological examination shall not be required unless the commissioners exact it.

If it be proved by a medical certificate that a person holding an employment in a public school is suffering from tubercular disease, such person must immediately cease to perform his duties.

APPENDIX T

SASKATCHEWAN TEACHER TENURE ACT
1965

APPENDIX T

SASKATCHEWAN TEACHER TENURE ACT 1965

3. (1) This Act applies only to a teacher who has not attained the age of sixty-five years and who has been employed by a school board:

a) for two complete and consecutive academic years; or

b) for four complete and consecutive terms; or

c) during a period in respect of which he has received the equivalent of two years' salary in accordance with The School Act or The Secondary Education Act;

and who during a subsequent academic year or term is still employed by the school board in teaching service, and applies only where a notice of termination of his contract is given to the teacher to take effect on the thirtieth day of June in any year.

(2) For the purpose of subsection (1) a teacher shall be deemed to have been employed during the period of any leave of absence granted by the school board.

4. (1) A notice of termination of contract given by a school board to a teacher shall be in form A and shall state the reasons for the board's action which may include professional incompetency, neglect of duty, unprofessional conduct, immorality, physical or mental disability and such other cause as in the opinion of the school board renders the teacher unsuitable for teaching service in the position then held by him, and in addition to stating the reasons the notice shall state that in the opinion of the board the teacher is for those reasons unsuitable for teaching service in the position then held by him.

(2) The notice shall be sent by registered mail to the teacher not later than the twenty-fifth day of May in the year in which it is to take effect.

5. (1) Where a school board gives notice of termination of contract to a teacher the school board shall within fifteen days from the date of the notice provide an opportunity for the teacher to be present at a regular or special meeting of the board and to give reasons why his contract ought not to be terminated.

(2) If the differences existing between the teacher and the school board are not resolved at the meeting, or if no such meeting is held, the teacher may appeal to the minister within five days from the date of the meeting or, where no such meeting has been held, within twenty days from

the date of the notice of termination of contract, to have the matter in dispute referred to a conciliation board; and the minister may in his discretion refer the matter in dispute to a conciliation board constituted pursuant to this Act.

6. (1) A conciliation board for the purpose of this Act shall consist of three members appointed by the minister.

(2) Where a conciliation board is to be established The Saskatchewan Teachers' Federation and The Saskatchewan School Trustees' Association shall, upon the written request of the minister, each nominate a person for appointment to the board and give the minister written notice of the name and address of such person, and the minister shall thereupon appoint each such person as a member of the conciliation board.

(3) If the minister does not within ten days from the mailing of the request receive such notice he may without such nomination appoint as a member of the conciliation board a person to represent the said federation or association, as the case may be.

(4) The members appointed pursuant to subsection (1) or (2) shall jointly nominate a third person and give the minister written notice of the name and address of that person, and the minister shall thereupon appoint that person as a member and chairman of the conciliation board.

(5) If the minister does not within ten days after the appointments pursuant to subsection (2) or (3) have been made receive written notice of the nomination of a third person pursuant to subsection (4) he may without such nomination appoint a person as a member and chairman of the conciliation board.

(6) The members of the conciliation board shall hold office for the calendar year in which they are appointed and shall be eligible for re-appointment.

7. Every conciliation board so constituted shall inquire into any matter referred to it by the minister under subsection (2) of section 5 and for that purpose the board and each member thereof shall have all the powers conferred upon commissioners by sections 3 and 4 of The Public Inquiries Act.

10. In addition to the report mentioned in subsection (1) of section 9 the conciliation board may make such recommendations to the teacher and the school board as it deems advisable.

11. (1) If the teacher and the school board prior to the holding of the inquiry or within ten days from the making of the report pursuant to subsection (1) of section 9 agree to accept the decision of the board, the teacher shall forthwith execute an agreement in form B and the school board shall forthwith execute an agreement in form C, and thereupon the decision as set forth in the report of the board shall be binding on the teacher and the school board.

(2) The teacher shall forthwith transmit the agreement executed by him (form B) and the school board shall forthwith transmit the agreement executed by it (form C), to the chairman of the conciliation board.

APPENDIX U

THE SCHOOL ACT, SASKATCHEWAN, 1965

APPENDIX U

THE SCHOOL ACT, SASKATCHEWAN, 1965

237. (1) Subject to The Teacher Tenure Act, a board may terminate its agreement with a teacher, the termination to be effective on the thirtieth day of June, by sending by registered mail to the teacher not later than the twenth-fifth day of May in the year in which it is to take effect a notice of its intention to do so.

(2) A board may terminate its agreement with a teacher, to take effect at a date other than the thirtieth day of June, by giving the teacher not less than thirty days' notice in writing of its intention to do so; but in such case the reason for the board's action shall be set forth in the notice.

(2A) Notwithstanding anything in The Teacher Tenure Act, where a teacher to whom The Teacher Tenure Act applies occupies a teaching position that is no longer necessary for the teaching requirements or programs in a district, the board may terminate its agreement with the teacher by giving to the teacher not less than thirty days' notice in writing of its intention to do so, but in such case the reason for the board's action shall be set forth in the notice.

(3) A notice of intention to terminate an agreement under subsection (1), (2) or (2A) shall state that the teacher may at any time within ten days after the date of receipt of the notice apply to the board for, and the board shall pursuant to such application give to the teacher, an opportunity to be present at a regular or special meeting of the board to show cause why his agreement should not be terminated.

(4) The teacher may, not later than fifteen days after the receipt of the notice under subsection (2) or (2A) apply to the minister for an investigation in accordance with section 238.

(5) A board shall not enter into an agreement with a teacher to fill any vacancy which may occur until the expiry of the fifteen days allowed for an application under subsection (4), or, where an application is made, until it is disposed of; but a board may, if it thinks fit, employ a substitute teacher pending the disposition of the application.

(6) Any agreement entered into contrary to subsection (5) is void.

(7) Notwithstanding anything contained herein, the board may be released from its agreement with a teacher by obtaining the written consent of the teacher.

238. (1) Upon receipt from a teacher or a board of an application, accompanied by a deposit of $15, for an investigation of the termination of the teacher's agreement, the minister may appoint for the purpose a board of reference consisting of three members, the chairman of which shall be nominated by the minister, one member by the teacher and one by the board of trustees. The member nominated by the teacher or the board shall not be a member of the board of trustees.

(2) If no nomination is received from the teacher or the board within ten days after receipt by the minister of the application for an investigation the remaining members or member shall exercise the powers of the board of reference.

(3) The board of reference shall meet and make its decision within thirty days after the appointment of the chairman.

(4) Both parties may be represented at the investigation and the chairman shall give at least ten clear days' notice to each party of the time and place thereof.

(5) The board of reference may, for the purpose of procuring the attendance of any person as a witness, serve such person with a notice requiring him to attend before the board, which notice shall be served in the same way and have the same effect as a subpeona requiring the attendance of a witness and the production by him of documents at the hearing or trial of an action, but no person shall be compelled under the notice to produce any document which he could not be compelled to produce on the trial of an action.

(6) The board of reference may appoint one of its number to act as secretary and to keep such record of the proceedings of the investigation as the board may deem necessary.

(7) The chairman may take evidence under oath, and any member may administer oaths to the parties and witnesses.

(8) The scope of the investigation and the findings of the board of reference thereon shall, unless that board otherwise determines, be limited to the reasons given by the board or by the teacher in the written notice of termination of agreement.

(9) All questions brought before the board of reference shall be decided by a majority vote of its members. The chairman shall have the right to vote, and in case of an equality of votes he shall also have a casting vote.

(10) The board of reference may confirm the termination of the agreement or order the reinstatement of the teacher or make such other order as, in its opinion the circumstances warrant; and the chairman shall forward a copy of the board's findings to the minister, and to the teacher and board of trustees concerned.

(11) The decision of the board of reference shall be final and any order of the board as the result of an investigation shall be binding upon the board of trustees and the teacher.

(12) The Arbitration Act does not apply.

APPENDIX V

SASKATCHEWAN EDUCATION ACT 1979

APPENDIX V

SASKATCHEWAN EDUCATION ACT 1979

206. A board of education may:

(a) without notice, suspend or dismiss a teacher and terminate the contract of such teacher for gross misconduct, neglect of duty or refusing or neglecting to obey any lawful order of the board, but the board shall, upon the written request of the teacher, provide to the teacher, within five days of the termination, a written notice of termination, and each such notice shall set out the reason or reasons for the termination;

(b) notwithstanding any other provision of this Act, where a teacher is employed in a teaching position that is no longer considered by the board to be necessary for the teaching requirements or educational programs of the division, terminate its contract of employment with the teacher by giving notice to the teacher in the prescribed form by registered or certified mail not less than thirty days prior to the day upon which the termination is to take effect, and each such notice shall set out the reason or reasons for the termination;

(c) terminate its contract of employment with a teacher, where the termination is to be effective on the thirtieth day of June in any year, by sending to the teacher by registered or certified mail, not later than the thirty-first day of May in that year, a notice in the prescribed form of its intention to do so, and each such notice shall set out the reason or reasons for the termination;

(d) terminate its contract of employment with a teacher, where the termination is to be effective on a date other than the thirtieth day of June in any year, by sending to the teacher by registered or certified mail, not less than thirty days prior to the day upon which the termination is to take effect, a notice in the prescribed form of its intention to do so, and each such notice shall set out the reason or reasons for the termination.

207. A teacher may terminate a contract of employment with a board of education:

(a) where the termination is to be effective on the thirtieth day of June in any year, by sending to the board by registered or certified mail, not later than the thirty-first day of May in that year, a notice of his intention to do so;

(b) where the termination is to be effective on a date other than the thirtieth day of June in any year, by sending to the board by registered or certified mail, not less than thirty days prior to the day upon which the termination is to take effect, a notice of his intention to do so, and each such notice shall set out the reason or reasons for the termination.

208. A contract of employment between a board of education and a teacher may be terminated at any time by mutual agreement in writing between the board and the teacher and, in that case, the teacher and the board are thereupon released from any obligation implicit in the contract or under this Act.

209. A notice of intention given by a board of education to a teacher to terminate a contract of employment under section 206 shall state that the teacher may, at any time within ten days after the day of receipt of the notice, apply to the board for an opportunity to attend a meeting of the board to show cause why the contract should not be terminated, and the board shall make provision for the teacher to do so.

210. Where a notice of intention to terminate a contract of employment is given by a board of education under clause (c) or (d) of section 206, the reasons for the termination required by those clauses to be stated in the notice may include professional incompetency, unprofessional conduct, immorality, neglect of duty, physical or mental disability, or any other cause which in the opinion of the board renders the teacher unsuitable for the position then held by him, and the notice shall state that in the opinion of the board the teacher is, for the reasons so stated, unsuitable for continued teaching service in that position.

211. (1) Where a contract of employment between a board of education and a teacher includes duties as a principal, assistant principal, vice-principal, supervisor or consultant, the board may give notice of its intention to amend the contract to exclude such duties, but no such agreement shall be deemed to alter the employment status of that teacher in any other respect.

(2) Any notice given by the board of education under subsection (1) shall be given in accordance with the provisions of clause (b), (c), or (d) of section 206.

(3) A notice of intention given by the board of education pursuant to subsection (1) shall state that the principal, assistant principal, vice-principal, supervisor or consultant, as the case may be, may, at any time within ten days after receipt of the notice, apply to the board for an opportunity to attend at a meeting of the board to show cause why the contract of employment should not be amended, and the board shall make provision for his attendance at its next regular or special meeting.

212. (1) Subject to subsections (2) and (3), where a notice of intention to terminate a contract of employment with a teacher is given by a board of education pursuant to section 206, the teacher may, within twenty days from the date of the postmaster's receipt for the envelope containing the notice of termination, apply to the minister for an investigation of the termination by a board of reference mentioned in section 214, and shall thereupon notify the board of education of the application.

(2) Where a notice of termination of contract of employment is given by a board of education pursuant to clause (c) of section 206, subsection (1) shall not apply in the case of a teacher:

(a) who has attained, or will attain, the full age of sixty-five years on or before the thirtieth day of June of the school year in which the notice of termination is given; or

(b) who has not been employed as a teacher by the board of education:

(i) for at least two complete school years;

(ii) for at least four complete and consecutive terms; or

(iii) during a period in respect of which he has received the equivalent of two years' salary in accordance with this Act.

(3) Nothing in this section applies to a case mentioned in subsection (1) of section 211.

213. Where a notice of intention to terminate a contract of employment is given by a teacher pursuant to clause (b) of section 207, the board of education may, within fifteen days from the date of the postmaster's receipt for the envelope containing the notice of termination, apply to the minister for an investigation of the termination by a board of reference established under section 214, and shall thereupon notify the teacher of such application.

214. (1) Upon receipt from a teacher or a board of education of an application for an investigation of the termination of a contract of employment pursuant to section 212 or 213, the minister shall appoint a board of reference consisting of:

(a) one person nominated by the teacher;

(b) one person nominated by the board of education; and

(c) one person nominated jointly by the teacher and the board of education in accordance with subsection (3), who shall be chairman of the board of reference;

but no person nominated pursuant to this subsection shall be a member of the board of education which is a party to the investigation.

(2) Nominations made pursuant to subsection (1) shall be made to the minister within ten days after the receipt by him of the application for an investigation, and the person or persons who are nominated at that time shall, in addition to any person who may subsequently be nominated pursuant to subsection (3), constitute the board of reference and shall exercise the powers of the board.

(3) Where no joint nomination is received by the minister pursuant to clause (c) of section (1) within the ten-day period mentioned in subsection (2), the minister shall notify a judge of the District Court, who shall, within five days of such notification, nominate a person who shall be chairman of the board of reference.

215. (1) The board of reference shall hold an investigation and make its decision within thirty days after the appointment of the chairman.

(2) The chairman of the board of reference shall give at least ten clear days' notice to each party of the time and place of the investigation.

216. The teacher and the board of education may be represented by counsel at the investigation.

217. The scope of the investigation and the findings of the board of reference thereon shall be limited to the reasons given in the written notice of termination of the contract of employment.

218. (1) The board of reference may, for the purpose of procuring the attendance of a person as a witness, serve that person with a notice requiring him to attend before the board of reference, and such notice shall be served in the same manner and have the same effect as a subpeona requiring the attendance of a witness and the production by him of documents at the hearing or trial of an action, but no such person shall be required under any such notice to produce any document that he could not be compelled to produce on the trial of an action in a court of law.

(2) The board of reference may take evidence under oath and any member of that board may administer oaths to the parties and to the witnesses.

219. The board of reference shall make provision for and keep such record of the proceedings of the investigation as it may consider necessary.

220. All questions brought before the board of reference shall be decided by a majority vote of its members and the chairman has the right to vote, and in the case of an equality of votes the chairman has a casting vote.

221. The board of reference may:

(a) confirm the termination of the contract of employment;

(b) order the continuation of the contract of employment;

(c) make any additional order or recommendation with respect to any matter incidental to an order under clause (a) or (b); or

(d) where the board of education and the teacher, at any time prior to or during the investigation, agree in writing to a mutually acceptable disposition of the matter, make an order confirming that settlement;

and the chairman of the board of reference shall forward a copy of its findings and decision to the minister and to the parties to this investigation.

222. (1) The decision of the board of reference shall be final and any order given pursuant to section 221 shall be binding upon the parties to the investigation.

(2) Nothing in this section shall be deemed to limit or abridge any right conferred upon a minority of electors pursuant to section 360.

(3) A board of reference shall have full power to determine any question of fact necessary to its jurisdiction, but, notwithstanding subsection (1), either party to an investigation may make an application to the Court of Queen's Bench for an order to set aside the decision of the board of reference on the grounds that:

(a) there is an error of law on the face of the record;

(b) the board of reference lacked jurisdiction to hear the matter; or

(c) the board of reference exceeded its jurisdiction.

(4) An application mentioned in subsection (3) shall be by motion, notice of which shall be served on the other party to the investigation within ten days from the day on which the decision is filed pursuant to section 223, and at least ten days before the day fixed for the hearing of the application.

223. A certified copy of the decision of a board of reference pursuant to section 221 shall be filed within fourteen days in the office of a local registrar of the Court of Queen's Bench and shall thereupon be enforceable as a judgment or order of that court in the same manner as any other judgment or order of that court.

224. (1) The expenses incurred by the board of reference in the discharge of its duties, and the per diem allowances, travelling and other expenses of the chairman of the board of reference, shall be determined by the Lieutenant Governor in Council.

(2) Each of the parties to the investigation shall be liable for the payment of all expenses incurred by him or his representative in connection with that investigation.

225. (1) Where a notice of termination of a contract has been given by a board of education pursuant to section 206, the board shall not enter into a contract of employment with a teacher, with respect to the position held by the teacher to whom the notice of termination has been given, until the expiry of the time allowed for an application under section 212, or, where an application is made, until it is disposed of, but the board may, in its discretion, employ a substitute teacher pending disposition of the application.

(2) Where a notice of termination of a contract has been given by a teacher pursuant to clause (b) of section 207, the teacher shall not enter into a contract of employment with any other board of education until the expiry of the time allowed for an appeal by the board of education, or, where an appeal is made, until the appeal is disposed of.

(3) Where an application for an appeal is given by a teacher mentioned in section 211, the board of education shall not enter into a contract with another teacher with respect to the position mentioned in the notice of intention until the appeal is disposed of.

226. The Arbitration Act does not apply to any investigation conducted pursuant to sections 212 to 225.

APPENDIX W

SCHOOL ORDINANCE, YUKON

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80. (1) A teacher employed pursuant to this Ordinance is on probation for two years from the date of commencement of his employment.

(2) The employment of a teacher on probation may be terminated by

(a) the Commissioner, on the recommendation of the Superintendent; or

(b) a Board;

by giving him not less than thirty days' notice in writing.

(3) If a teacher on probation does not receive notice in writing from the Commissioner or a Board, of the termination of his employment prior to May 31st of the second school year of his employment, his appointment shall be a continuing one.

82. (1) A Regional Superintendent or a Board may suspend a teacher

(a) for misconduct, neglect of duties, or refusal or neglect to obey a lawful order;

(b) where the teacher is incapable of performing his duties;

(c) where the teacher is unsatisfactory in performing his duties;

(d) where the teacher has been charged with a criminal offence and the circumstances thereby created render it inadvisable for him to continue his duties.

(2) Where a Regional Superintendent or a Board suspends a teacher pursuant to subsection (1), the teacher and the Superintendent shall forthwith be notified in writing of the suspension and the reason therefor.

(3) An employee in the bargaining unit who is suspended pursuant to subsection (1) may request an interview with the Regional Superintendent and may be accompanied by his bargaining agent.

(4) A Regional Superintendent or a Board who suspends a teacher may make a recommendation for dismissal.

83. (1) A teacher who is suspended by a Regional Superintendent or a Board pursuant to subsection 82(1), may appeal the suspension to the Superintendent by written notice not later than two weeks from the date of suspension.

(2) If no appeal is submitted within two weeks with respect to the suspension imposed pursuant to subsection 92(1), the decision of the Regional Superintendent or the Board shall be final and binding.

(3) Where a recommendation for dismissal has been made in conjunction with a suspension and where no appeal has been made pursuant to subsection (1), the Superintendent may recommend to the Commissioner that the teacher be dismissed.

84. (1) Where the Superintendent receives an appeal pursuant to subsection 83(1), he shall investigate the matter and give the teacher an opportunity, within two weeks of receipt of the appeal, to make representations orally or in writing either personally or by Counsel or agent, or with his consent his barganing agent.

(2) Where the Superintendent, after carrying out the provisions of subsection (1) is satisfied that the suspension of the teacher was warranted, he may confirm or modify the order of suspension and, where the suspension was accompanied by a recommendation for dismissal, the Superintendent may recommend to the Commissioner that the teacher be dismissed.

(3) Where the Superintendent is satisfied that the reason for the suspension is unwarranted, he shall:

(a) terminate or revoke the order of suspension;

(b) reprimand the teacher in writing; or

(c) take other appropriate action.

85. (1) Not later than two weeks after carrying out the provisions of subsection 84(1), the Superintendent shall notify the teacher and the Regional Superintendent or the Board in writing of his decision.

86. (1) Where the Superintendent recommends the dismissal of a teacher to the Commissioner or the Board, the Commissioner or the Board shall forthwith dismiss the teacher and the teacher, thereupon ceases to be an employee with effect from the date fixed for dismissal.

87. (1) A teacher who is an employee within the meaning of section 118 may, within two weeks of receipt of the decision of the Superintendent, appeal the decision to an adjudicator appointed by the Chairman of the Yukon Teachers Staff Relations Board and the decision of the adjudicator thereon shall be final and binding.

(2) Where an appeal is made pursuant to subsection (1), the provisions of sections 182 to 196 shall apply.

88. (1) On receipt of the decision of the adjudicator, the Commissioner shall take any action necessary to implement the decision.

89. (1) A teacher shall not be entitled to be paid his salary for the period for which he is under suspension but the Commissioner or the Board may make an allowance not exceeding one half of the amount of his salary to a teacher who has been suspended with a recommendation for dismissal.

(2) Where the original order of suspension is revoked, the teacher shall be entitled to be paid his full salary during the period of suspension, less the amount of any allowance which may have been paid to him during that period.

90. (1) Where a teacher suspended pursuant to paragraph 82(1)(d) is acquitted of the charge in respect of which he was suspended, the Superintendent or the Board shall reinstate him after the expiry of the appeal board or the expiry of the period for appeal from the last court from which the appeal from the acquittal is taken and in which he is acquitted whichever is the later.

(2) Where the teacher suspended pursuant to paragraph 82(1)(d) is convicted of the charge in respect of which he was suspended, the Commissioner or the Board may dismiss him after the expiry of the appeal period or after the expiry of the period for appealing from the last court to which appeal from conviction is taken and in which he is convicted, whichever is the later.

91. (1) Notwithstanding sections 83, 85 and 87, time limits regulating the processing of decisions and appeal may be extended by mutual agreement between the Superintendent and the teacher.

92. (1) Where a teacher is absent from duty without leave for a period in excess of five consecutive instructional days, he may by notice in writing be delcared by the Superintendent or a Board to have abandoned his position and thereupon the teacher ceases to be an employee.

93. (1) At the end of any school year, the Superintendent or a Board may lay-off a teacher where:

(a) there is a decrease in the enrolment of pupils;

(b) a school, classroom or instructional department is closed and instruction therein is discontinued; or

(c) an instructional programme is discontinued.

(2) A teacher shall be entitled to not less than sixty days notice of a lay-off.

121. (1) There shall be a Board to be called the Yukon Teachers Staff Relations Board, consisting of a Chairman, and such other members, not less than five, as the Commissioner considers advisable.

(2) The Chairman shall be appointed by the Commissioner.

(3) The members of the Board other than the Chairman shall be appointed by the Commissioner on the recommendation of the Chairman.